

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY, *et al.*,
v. *Petitioners,*

CITIZENS FOR THE ABATEMENT OF
AIRCRAFT NOISE, INC., *et al.*,
Respondents,

UNITED STATES OF AMERICA,
Intervenor.

On Writ of Certiorari to the
United States Court of Appeals
for the District of Columbia Circuit

JOINT APPENDIX

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CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
November 16, 1988	Complaint filed in the United States District Court for the District of Columbia.
December 16, 1988	Answer filed.
December 20, 1988	Motion by plaintiffs for summary judgment filed.
January 30, 1989	Cross Motion by defendants for summary judgment and opposition to plaintiffs' motion for summary judgment filed.
February 14, 1989	Reply Memorandum by plaintiffs in support of motion for summary judgment and in opposition to defendants' cross motion for summary judgment filed.
February 27, 1989	Reply Memorandum by defendants in support of cross motion for summary judgment and in opposition to plaintiffs' motion for summary judgment filed.
April 19, 1989	Notice filed by plaintiffs of case in United States District Court for the District of Columbia— <i>Federal Fire Fighters Association, Local 1, et al. v. United States, et al.</i> , Civil Action No. 88-1022-LFO—involving common issue of law.
June 5, 1989	Notice filed by defendants of order by court staying consideration of the identical constitutional issue in case involving common issue of law.
July 20, 1989	Memorandum Opinion and Order by Judge Joyce H. Green denying motion for summary judgment by plaintiffs and granting cross motion for summary judgment by defendants.
August 3, 1989	Notice of Appeal filed by plaintiffs from order entered July 20, 1989.

DATE	PROCEEDINGS
October 24, 1989	—Motion filed by the Attorney General of the United States to exercise his statutory right to intervene as a full party in the United States Court of Appeals for the District of Columbia Circuit.
December 1, 1989	—Brief for appellants filed in the United States Court of Appeals for the District of Columbia Circuit.
January 17, 1990	—Brief for the United States filed.
January 30, 1990	—Brief for appellees filed.
February 26, 1990	—Reply Brief for appellants filed.
October 26, 1990	—Opinion and Judgment of the United States Court of Appeals for the District of Columbia Circuit reversing the district court's ruling.
November 19, 1990	—Unopposed Motion of appellees for stay of mandate and effective date of opinion and order filed in the United States Court of Appeals for the District of Columbia Circuit.
December 6, 1990	—Order entered staying issuance of mandate and effective date of court's opinion and order.
December 10, 1990	—Petition for Writ of Certiorari filed.
December 19, 1990	—Respondents' Brief in response to petition for a writ of certiorari filed.
December 19, 1990	—Brief for the United States filed.
January 9, 1991	—Brief of the Commonwealth of Virginia as <i>amicus curiae</i> in support of petitioners filed.
January 14, 1991	—Petition for Writ of Certiorari granted.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 88-3319

JOYCE GREEN, J. JHG

CITIZENS FOR THE ABATEMENT OF AIRCRAFT NOISE, INC.,
2001 O Street, N.W.
Washington, D.C. 20036,

JOHN W. HECHINGER, SR.,
2838 Chain Bridge Road, N.W.
Washington, D.C. 20016,

and

CRAIG H. BAAB,
4404 Greenwich Parkway, N.W.
Washington, D.C. 20007,

Plaintiffs,

v.

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY,
Hangar 9
Washington National Airport
Washington, D.C. 20001,

and

BOARD OF REVIEW,
Metropolitan Washington Airports Authority,
Hangar 8
Washington National Airport,
Washington, D.C. 20001,
Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

[Filed Nov. 16, 1988]

1. This action seeks a declaration that the review of certain actions of the defendant Metropolitan Washington Airports Authority by a Board of Review composed of nine Members of Congress is unconstitutional. It also seeks an order enjoining the Board of Review from exercising its review authority and enjoining the Metropolitan Washington Airports Authority from performing any of the actions that are required to be submitted to the congressional Board of Review.

JURISDICTION

2. This Court has jurisdiction under 28 U.S.C. §§ 1331 & 1343.

PARTIES

3. Plaintiff Citizens for the Abatement of Aircraft Noise, Inc. ("CAAN") is a non-profit membership organization composed of citizens' groups and individuals from the District of Columbia, Virginia, and Maryland, most of whom live under flight paths to and from Washington National Airport. It is incorporated in Maryland, but has its principal place of business in the District of Columbia. Its primary purpose is to develop and implement a rational transportation policy for the Metropolitan Washington D.C. area, which would include balanced service at the area's three airports, reduce aircraft operations at Washington National Airport, and alleviate the noise, safety problems, and air pollution that result from such operations. In order to further the community interest in health, safety, and environmental improvements at National Airport, CAAN advocates its positions before defendant Metropolitan Washington Airports Authority.

4. Plaintiff John W. Hechinger, Sr., is a member and honorary co-chairman of CAAN. He resides in the flight path of airplanes going to and from Washington National Airport and is adversely affected by noise, vibrations, and the environmental consequences of the air traffic going to and from that airport. For two decades, he has been an advocate for reducing noise at Washington National Airport both as Chairman of the Council of the District of Columbia during 1967-1969 and as a private citizen.

5. Plaintiff Craig H. Baab resides in the flight path of airplanes going to and from Washington National Airport and is adversely affected by the noise, safety problems, and environmental consequences of overflights. He is concerned that airplanes that routinely fly at low elevations over his neighborhood present safety problems that increase as the level of air traffic increases.

6. Defendant Metropolitan Washington Airports Authority ("Airports Authority") is a public body that was established by chapter 598 of the 1985 Virginia Acts of Assembly, as amended by chapter 665 of the 1987 Virginia Acts of Assembly, and the District of Columbia Regional Airports Act of 1985, D.C. Code §§ 7-1501-7-1511, in accordance with the terms of the Metropolitan Washington Airports Act of 1986, Pub. L. No. 99-591, 99th Cong., 2d Sess. (1986) ("Airports Act"), to operate and improve the Metropolitan Washington Airports, i.e., Washington National Airport and Washington Dulles International Airport. On June 7, 1987, it assumed operating responsibility for the Metropolitan Washington Airports. Its offices are located at Washington National Airport.

7. Defendant Board of Review of the Airports Authority is composed of nine Members of Congress appointed by the Board of Directors of the Airports Authority from lists supplied by the Senate and House of Representatives. It has the power to veto certain major

actions of the Airports Authority as described in paragraphs 12 and 13 below.

STATUTORY SCHEME

8. The Airports Act authorized the transfer of operating responsibility for the Metropolitan Washington Airports from the Federal Aviation Administration ("FAA") to the Airports Authority. 49 U.S.C. §§ 2452, 2454.

9. Under section 2456(c) of the Airports Act, D.C. Code § 7-1506(c), and 1987 Virginia Acts, ch. 665, § 5, the Airports Authority has the power to acquire, maintain, improve, operate, protect, and promote the Metropolitan Washington Airports for public purposes, to issue bonds, to acquire real and personal property, to levy fees and other charges, and to make agreements with employee organizations.

10. The Airports Authority is governed by an eleven-member Board of Directors, which is composed of five members appointed by the Governor of Virginia, three members appointed by the Mayor of the District of Columbia, two members appointed by the Governor of Maryland, and one member appointed by the President with the advice and consent of the United States Senate. 49 U.S.C. § 2456(e)(1); D.C. Code § 7-1506(e)(1); 1987 Virginia Acts ch. 665, § 4(A). The Board members serve for staggered six-year terms, except that most of the initial terms are of shorter duration. 49 U.S.C. § 2456(e)(3); D.C. Code § 7-1506(e)(3); 1987 Virginia Acts ch. 665, § 4(C).

11. The Airports Act also created a nine-member Board of Review to be appointed by the Airport Authority's Board of Directors. 49 U.S.C. § 2456(f). Under the Airports Act, all of the members of the Board of Review must be Members of Congress, selected from lists provided by the Speaker of the House and President pro tempore of the Senate. They must include two members

of the House Public Works and Transportation Committee, two members of the House Appropriations Committee, two members of the Senate Commerce, Science, and Transportation Committee, two members of the Senate Appropriations Committee, and one member chosen alternately from the House and the Senate. *Id.* § 2456(f)(1). The Airports Act states that the Board of Review members serve "in their individual capacities, as representatives of users of the Metropolitan Washington Airports," but it prohibits Senators and Representatives from Maryland and Virginia and the District of Columbia Delegate from serving on the Board of Review. *Id.* The Board of Review members serve staggered six-year terms, except that most of the initial terms are of shorter duration and the alternating member serves a two-year term. *Id.* § 2456(f)(2).

12. Any actions of the Board of Directors that (1) adopt an annual budget, (2) authorize the issuance of bonds, (3) adopt, amend, or repeal a regulation (which includes all changes in the hours of operation and types of aircraft serving either of the airports, *id.* § 2456(g)), (4) adopt or revise a master plan, including any proposal for land acquisition, or (5) appoint the chief executive officer, cannot go into effect if the Board of Review disapproves them. *Id.* § 2456(f)(4).

13. The Board of Directors must submit any actions of the kind described in paragraph 12 to the Board of Review at least 30 days before they are to become effective, with the exception of the annual budget, which must be submitted at least 60 days before it is to become effective. *Id.* § 2456(f)(4)(A). If five members of the Board of Review disapprove any of the actions described in paragraph 12 within 30 days of their submission, such actions shall not take effect. *Id.* § 2456(f)(3) & (4). On August 9, 1988, the Board of Review exercised its veto power to nullify an Airports Authority regula-

tion that would have allowed car pools to use the Dulles Access Road for one year.

14. In addition to its power of disapproval, the Board of Review may ask the Airports Authority to consider, vote, or report on any matter "related to" either National or Dulles airport, and the Airports Authority has a statutory obligation to comply with any such request as promptly as feasible. *Id.* § 2456(f)(3) & (5). Members of the Board of Review may also participate as nonvoting members at all meetings of the Airports Authority's Board of Directors. *Id.* § 2456(f)(6).

15. Section 2456(h) of the Airports Act provides that, if the Board of Review is unable to carry out its functions by reason of a judicial order, the Airports Authority shall have no authority to perform any of the actions that are subject to disapproval by the Board of Review.

AIRPORTS AUTHORITY PROCEEDINGS

16. In October 1987, the Airports Authority proposed a master plan for National Airport.

17. In November 1987, CAAN submitted comments to the Airports Authority on the master plan for National Airport, in which CAAN objected to the planned introduction of wide-bodied aircraft and the overall expansion of National Airport facilities to accommodate an increase in the level of passenger activity. CAAN also criticized the absence of a comprehensive analysis of environmental impact, the disregard of safety concerns, and the failure to reduce (and the likelihood of an increase in) the amount of aircraft noise, in part, because CAAN believes the Master Plan will lead to an increase in nighttime flights.

18. In March 1988, over CAAN's opposition, the Airports Authority approved the master plan for National Airport, which makes no provision for reducing noise levels, and provides for expanding the airport's capacity.

The Airports Authority can put this plan into operation only if it has the powers, which are subject to disapproval by the Board of Review, to raise and budget funds for this purpose.

19. On April 13, 1988, four members of the Board of Review met and voted not to disapprove the master plan. Thereafter, the Airports Authority implemented the master plan by entering into construction contracts and beginning construction at National Airport.

20. In March 1988, the Airports Authority issued its first bonds series to fund improvements at Washington National and Dulles Airports. It has since issued three additional bonds series for such improvements. The Board of Review did not veto the issuance of any of these bonds series.

21. Because the congressional Board of Review excludes representation from the metropolitan Washington D.C. area, and yet it wields ultimate control over the Airports Authority, it has diminished the influence that CAAN and its members have over decisions concerning the operation of the airports, which were previously made by Congress and/or the FAA.

CAUSE OF ACTION

22. The Board of Review's power under 49 U.S.C. § 2456(f)(4) to disapprove actions of the Airports Authority violates the bicameralism requirement of Article I, §§ 1, 7, the Presentment Clauses, Article I, § 7, cls. 2-3, and the doctrine of separation of powers.

23. Since the Board of Review cannot constitutionally exercise its veto power, the Airports Authority does not have the authority under the Airports Act, because of the operation of section 2456(h) set forth in paragraph 15, to perform any of the actions subject to review. As a result, the Airports Authority may not, consistent with the Airports Act and 42 U.S.C. § 1983, implement its

Master Plan, which is now causing injuries to CAAN and its members because of increases in noise levels and safety and environmental problems at National Airport and is likely to cause increasing injuries to them in the future.

RELIEF

Wherefore, plaintiffs pray for an order and judgment

(1) declaring that the Board of Review's authority under 49 U.S.C. § 2456(f) (4) to disapprove actions of the Airports Authority is unconstitutional and void because it violates the bicameralism requirement of Article I, §§ 1, 7, the Presentment Clauses, Article I, § 7, cls. 2-3, and the doctrine of separation of powers;

(2) enjoining the Board of Review from exercising its review authority and from taking any other actions under the Airports Act;

(3) declaring that the Airports Authority is forbidden from implementing any of the actions that are required to be submitted to the Board of Review and enjoining it from implementing the Master Plan approved by it in March 1988;

(4) awarding plaintiffs their attorneys' fees and costs; and

(5) granting such other and further relief as the Court deems just and proper.

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November 16, 1988

U.S. District Court for the District of Columbia
Plaintiffs' Exhibit 2

ADVISORY COMMISSION ON THE
REORGANIZATION OF THE
METROPOLITAN WASHINGTON AIRPORTS

REPORT TO THE SECRETARY
DECEMBER 18, 1984

I. *Introduction*

The Secretary of Transportation created this Advisory Commission on June 18, 1984 and charged it with developing a proposal for transferring the Metropolitan Washington Airports (MWA), Washington National and Washington Dulles International, from federal ownership to a state, local or interstate public entity. It is important to understand that she did not ask us to determine *whether* the airports should be transferred, but *how* they should be transferred.

The transfer idea is not a new one. The government's venture in operating air carrier airports began when National Airport opened for business in 1941. By 1948, the Airport was identified as inappropriate for operation as a conventional federal agency, and the Hoover Commission recommended that it be turned over to a government corporation in 1949.

In the following thirty-five years, many attempts were made to reorganize first National, and later both National and Dulles into a government corporation. In the late 1960s, the alternative of local control was considered.

Although the idea of transfer is not new, Secretary Dole's approach to the issue is: She asked a commission comprised of the parties principally interested in the operation of the Metropolitan Washington Airports to recom-

mend how the airports should be transferred. Her approach reflects a recognition that transfer is essentially a political issue which requires a broad consensus for success.

The Commission has diligently sought to find a middle ground that best serves the public interest and meets the concerns of the several jurisdictions the Airports serve, the users of the Airports, and the Congress, which must authorize transfer. Although we have not been able to reach unanimous agreement on all points, we have agreed on many of the basics and hope that the Secretary will be able to fashion a workable proposal to the Congress on the basis of our efforts.

Finally, the Commission recognizes that its report is necessarily general, and anticipates that the Secretary will provide more detail in her legislative proposal to the Congress.

II. *The Commission's Deliberations*

The Commission held seven public meetings, all at the Department of Transportation Headquarters Building, and a public hearing at the Federal Aviation Administration auditorium.¹

Early meetings were devoted to defining the scope of the Commission's concerns. A survey of existing authorities capable of acquiring and operating the Airports found a number of agencies with sufficient authority, but none able to balance the interests of the three jurisdictions without further legislation. Moreover, none of the candidate authorities, excepting only the Maryland State Aviation Administration, had any experience with the operation of airports. The Commission quickly concluded that a new authority should be created to operate the

¹ Meetings were held July 25, August 7, October 17, November 7, November 29, December 13 and December 18. The public hearing was held September 12.

Airports, so that it could be tailored to meet the needs of the metropolitan area.

The Commission also received a summary report on the structure of several existing airport authorities, and focused its attention on two well-known and successful authorities whose facilities serve several jurisdictions: the Port Authority of New York and New Jersey, which operates the three major air carrier airports in the New York metropolitan area, and the Kenton County Airport Board, a Kentucky-based agency that operates the Greater Cincinnati International Airport.

Speakers from both authorities appeared at the October 17 meeting.² The Cincinnati airport, located across the Ohio River in Kentucky, is owned and operated by a Kentucky municipal agency. The Airport Board, consisting of six members who are residents of Kentucky, and the Advisory Board, consisting of eight members who are residents of Ohio, meet as a single board. Because of restrictions in Kentucky law, only the Airport Board members may vote.

The Port Authority, an interstate compact agency created in 1921, undertook operation of the New York area airports in 1948. It is governed by a twelve-member Board of Commissioners, six appointed by the Governor of New York and six by the Governor of New Jersey. Each Governor has the right to veto Board actions.

Although the Commission concluded that neither authority provided the ideal model for a Metropolitan Washington Airports authority, their presentations provided useful advice on how to address interstate concerns. And despite considerable differences in the structure and ex-

² Patrick J. Falvey, General Counsel and Assistant Executive Director, and Dr. William J. Ronan, a Commissioner, addressed the Commission on the Port Authority's experiences; William C. Whitson, Chairman, and Wilbert Ziegler, General Counsel, discussed the organization and history of the Kenton County Board.

perience of the two authorities, their representatives agreed on major points. They both emphasized the importance of an independent board with distinguished members, and recommended that they not receive compensation.

The Commission also received financial advice from Wheat, First Securities of Richmond and Salomon Brothers of New York in the form of a report (copy attached) and several presentations. In sum, the report concluded that an independent Metropolitan Washington Airports Authority would be self-sustaining, and capable of financing major improvements at both National and Dulles at favorable rates through issuance of tax-exempt revenue bonds, without appropriation of federal or state funds. Later meetings were devoted to discussion and debate of the principal issues, as described below.

III. *Issues and Recommendations*

The Commission identified the following issues, and the majority reached a consensus on them as follows:

A. *Single Authority*

Washington National and Washington Dulles International Airports should be transferred by the Congress to a single, independent public authority to be created jointly by the Commonwealth of Virginia and the District of Columbia, with the capacity to issue tax exempt revenue bonds to finance improvements at both airports.

The Commission inquired into the possibility of transferring the two airports separately, but financial analysis shows that separating them would require such "substantially higher landing fees and terminal rentals" at Dulles that "may put [it] at a competitive disadvantage." In addition, the Commission believes that for operational effectiveness, promotion and economic development, and service to travellers, the two airports should be coor-

minated by a single management, as they have been in the past.

Independence is critical because both airports serve the entire metropolitan region, and the authority therefore should not be an agency within any one state or local government.

The ability to issue tax-exempt revenue bond is an advantage critical to the transfer proposal. This enables an airport authority to finance capital improvements from private capital sources at a minimum cost.

The Maryland members of the Commission³ agree with the majority with respect to revenue bonding authority, but believe that the Metropolitan Washington Airports should be separated. They recommend that Dulles be transferred to the Commonwealth of Virginia, while National be transferred to a tripartite authority with equal representation of Maryland, Virginia and the District of Columbia.

B. Conditions of Transfer

The transfer should be by long-term lease with only nominal consideration, on the condition that the new authority operate both National and Washington Dulles International as primary air carrier airports serving the metropolitan Washington area. Any revenues of the new authority should be expended only on Dulles and National airport facilities. The authority should assume any existing hypothetical debt of the MWA to the Treasury.

Valuation of airport property is a difficult business, as airports are rarely bought and sold. The Commission is satisfied that, however a market price might be determined, a public transferee willing to pay a substantial price for the Metropolitan Washington Airports is not available. Nevertheless, the Commission believes that a

³ Paul Sarbanes, Steny Hoyer, James Truby and Scott Fosler.

new airport authority should reimburse the federal government for the recoverable costs of past airport capital investments. This should be done on the same basis the Metropolitan Washington Airports has been repaying these costs to the Treasury. The existing debt stands at \$67.3 million. The new authority would make progress payments over a fixed period of not more than 35 years as part of its lease.

C. Governing Board

The authority should be governed by a single board of eleven members serving staggered six-year terms, five members to be appointed by the Governor of Virginia; three by the Mayor of the District of Columbia; two by the Governor of Maryland; and one by the President, with the advice and consent of the Senate. The board should elect a chair from among its members.

Members should not hold elective or appointive political office, should reside in the Washington Standard Metropolitan Statistical Area, and should serve without compensation. The residence requirement should not apply to the Presidential appointee.

A seven-vote majority should be required to approve bond issues and the annual budget.

The Commission has been most impressed with the need for a non-political, independent authority with a board able to reach decisions without consideration of extraneous issues. The conditions proposed on board membership are common to most successful airport authorities. The residency requirement is recommended to allay any concerns that either Governor might appoint members from other parts of the state who might have interests inconsistent with those of the Washington area.

Consistent with their overall position, the Maryland members dissent from the proposed allocation among the three jurisdictions of members of the board, though not from

the proposed restrictions on their appointment, or the choice of the governors and the mayor as appointing authorities. With respect to National Airport, they recommend three members appointed by each jurisdiction, with the possibility of two members to represent the Congress.⁴

Mr. Ignatius, on behalf of the Air Transport Association, prefers an allocation of board members that would provide for a majority of the appointees from a single jurisdiction, and abstains with respect to the composition of the eleven-member board.

D. Employees

Pay levels, pensions and other benefits for present employees should be preserved.

The Commission has been impressed with the favorable reputation enjoyed by employees of the Metropolitan Washington Airports. Continuity will be required when the Airports change hands, and employees should be protected not only out of fairness to them, but to keep the airports functioning as efficiently as in the past.

For that reason, the new authority should provide a level of rights and benefits for the existing employees no less than what they are receiving at the time of transfer. To this end, the authority should be permitted to participate in the federal pension system with respect to present employees, or to develop an at least equivalent pension system of its own. MWA employees should retain any federal employment rights for a period of two years. An adequate transition period should be provided to assure that a complete pay and benefit package is developed before employees must elect between employment with the new authority and continuing federal employment.

The Maryland members do not dissent from this recommendation.

⁴ Mr. Fosler advocates an agreement based on the same board structure for a single authority operating both airports.

IV. Conclusion

The Commission therefore recommends to the Secretary of Transportation that she submit to the Congress legislation authorizing the transfer of the Metropolitan Washington Airports to an independent authority to be established by interstate compact between the Commonwealth of Virginia and the District of Columbia. The transfer should be made only if the two jurisdictions enact legislation establishing such an authority with the characteristics set forth above.

Respectfully submitted,

/s/ A. Linwood Holton, Jr.
A. LINWOOD HOLTON, JR.
Chairman

/s/ William J. Ronan
WILLIAM J. RONAN

/s/ Franklin E. White
FRANKLIN E. WHITE, for
CHARLES S. ROBB
Governor of Virginia

/s/ Pauline A. Schneider
PAULINE A. SCHNEIDER, for
MARION BARRY, JR., Mayor
of the District of
Columbia

/s/ John W. Warner
United States Senate

/s/ Frank Wolf
FRANK WOLF
House of Representatives

/s/ Betty Ann Kane
BETTY ANN KANE
District of Columbia Council

/s/ Martha V. Pennino
MARTHA V. PENNINO
Fairfax County Board of
Supervisors

/s/ Paul R. Ignatius
PAUL R. IGNATIUS
Air Transport Association

/s/ Duane H. Ewedahl
DUANE H. EWEDAHL
Regional Airline Association

/s/ John H. Winant
JOHN H. WINANT
National Business Aircraft
Association

Attachments

Views of the Maryland Delegation
Wheat, First & Salomon Brothers Analysis

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
Washington, D.C. 20515

Steny H. Hoyer
5th District, Maryland

Appropriations Committee
Treasury, Postal Service,
General Government

Labor,
Health and Human Services,
Education

TO: MEMBERS, ADVISORY COMMISSION ON THE REORGANIZATION OF THE METROPOLITAN WASHINGTON AIRPORTS

FROM: CONGRESSMAN STENY HOYER, SENATOR PAUL SARBANES, GOVERNOR HARRY HUGHES, COUNCILMAN SCOTT FOSLER

RE: ALTERNATIVE REPORT TO THE COMMISSION

These comments are offered in the interest of producing a report which contributes to achieving our shared objective, as outlined in the Commission's Charter: transferring National and Dulles airports to an appropriate state, local, or interstate body.

As we indicated during the December 13th Commission meeting, Governor Holton's efforts to "forge a solution" which reflects the interests of the Commission membership have been impressive. In this regard, we appreciate the Governor's openness to submitting a report to Secretary Dole which describes two approaches under which local control of National and Dulles could be exercised.

We concur with Secretary of Transportation Dole's premise that the Federal Aviation Administration should not be in the business of operating airports. We believe that the proposal submitted by Congressman Hoyer to transfer National Airport to an interstate authority and

Dulles International Airport to the State of Virginia is consistent with the Secretary's objectives of heightening local control over the two Washington Metropolitan Airports, as well as relinquishing federal control over the airports.

Maryland strongly endorses the transfer of National Airport to an interstate authority and Dulles Airport to the State of Virginia. Under this approach, National would be leased to a nine member interstate authority with three members each from the District of Columbia, Virginia and Maryland, appointed by the Mayor of the District of Columbia and the two Governors. The National Airport Authority would have full policy, operating and financing authority.

We are open to including one or two representatives of the Federal Government on the authority to recognize the Federal interest in the "Nation's Airport."

The members of the authority would serve staggered six year terms and would not hold elective or appointed political office, would reside in the Washington Metropolitan Area, and would serve without compensation. Employees of National Airport would be protected, and their pay levels, pensions and other benefits would be preserved.

Under our proposal, Dulles International Airport would be transferred to the State of Virginia. Employees of Dulles would be protected, and their pay levels, pensions and other benefits would be preserved. Virginia, of course, would have full policy and financing authority and responsibility once the transfer of Dulles has occurred.

This approach, we believe, reflects the significant interest of each of the principal jurisdictions in National Airport while allowing Virginia to develop Dulles in the same way Maryland is developing Baltimore-Washington International.

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
Washington, D.C. 20515

Steny H. Hoyer
5th District, Maryland

Appropriations Committee
Treasury, Postal Service,
General Government
Labor,
Health and Human Services,
Education

TO: MEMBERS, ADVISORY COMMISSION ON THE REORGANIZATION OF THE METROPOLITAN WASHINGTON AIRPORTS

FROM: CONGRESSMAN STENY HOYER, SENATOR PAUL SARBANES, GOVERNOR HARRY HUGHES, COUNCILMAN SCOTT FOSLER

RE: ALTERNATIVE REPORT TO THE COMMISSION

These comments are offered in the interest of producing a report which contributes to achieving our shared objective, as outlined in the Commission's Charter: transferring National and Dulles airports to an appropriate state, local, or interstate body.

As we indicated during the December 13th Commission meeting, Governor Holton's efforts to "forge a solution" which reflects the interests of the Commission membership have been impressive. In this regard, we appreciate the Governor's openness to submitting a report to Secretary Dole which describes two approaches under which local control of National and Dulles could be exercised.

We concur with Secretary of Transportation Dole's premise that the Federal Aviation Administration should not be in the business of operating airports. We believe that the proposal submitted by Congressman Hoyer to transfer National Airport to an interstate authority and

Dulles International Airport to the State of Virginia is consistent with the Secretary's objectives of heightening local control over the two Washington Metropolitan Airports, as well as relinquishing federal control over the airports.

Maryland strongly endorses the transfer of National Airport to an interstate authority and Dulles Airport to the State of Virginia. Under this approach, National would be leased to a nine member interstate authority with three members each from the District of Columbia, Virginia and Maryland, appointed by the Mayor of the District of Columbia and the two Governors. The National Airport Authority would have full policy, operating and financing authority.

We are open to including one or two representatives of the Federal Government on the authority to recognize the Federal interest in the "Nation's Airport."

The members of the authority would serve staggered six year terms and would not hold elective or appointed political office, would reside in the Washington Metropolitan Area, and would serve without compensation. Employees of National Airport would be protected, and their pay levels, pensions and other benefits would be preserved.

Under our proposal, Dulles International Airport would be transferred to the State of Virginia. Employees of Dulles would be protected, and their pay levels, pensions and other benefits would be preserved. Virginia, of course, would have full policy and financing authority and responsibility once the transfer of Dulles has occurred.

This approach, we believe, reflects the significant interest of each of the principal jurisdictions in National Airport while allowing Virginia to develop Dulles in the same way Maryland is developing Baltimore-Washington International.

By recognizing that all jurisdictions do not have equivalent interests in Dulles, the Hoyer approach avoids the problem of fair representation which is inherent and insoluble in the single-authority proposal. As stated earlier, we understand that Virginia is troubled by the prospect of subsidizing Dulles during the initial period under a two-authority approach. However, we point out that Maryland's \$200 million investment in Baltimore-Washington International is paying significant dividends. We believe that this type of investment by Virginia and Dulles should prove equally beneficial.

Finally, we also believe that the Alternative Proposal offered by Councilman Scott Fosler of Montgomery County is a worthwhile alternative in that it endorses a single airport board for both National and Dulles airports—a concept that meets the efficiency-in-operations objectives of Secretary Dole and has the support of a majority of the Members on the Airport Commission. The Fosler proposal, takes what we believe to be an important step further by recognizing the implicit interest of each of the neighboring jurisdictions in a fair regional air transportation policy, and provides that the single board reflect an equal representation of members from Maryland, Virginia, and the District of Columbia. We believe that the Fosler proposal warrants further discussion.

Respectfully submitted,

/s/ Harry R. Hughes
HARRY R. HUGHES
Governor, State of Maryland

/s/ Steny H. Hoyer
STENY H. HOYER
Congressman,
State of Maryland

/s/ Paul S. Sarbanes
Senator, State of Maryland

/s/ Scott Fosler
SCOTT FOSLER
Councilman, Montgomery
County, Maryland

Alternative Proposal
Submitted by Councilman Scott Fosler

I support the Maryland proposal to transfer Washington National Airport to an interstate authority and Dulles Airport to the State of Virginia as an important step toward regional airport management. However, I also believe the benefits to the entire region would be even greater if the two airports were managed by a single authority that genuinely reflected the interests of the entire Washington metropolitan area. While the Commission has done an admirable job of moving toward our shared objective, I do not believe the majority proposal for an authority comprised of five members from Virginia, three from the District of Columbia, and two from Maryland, with one member appointed by the President, will accomplish the representation I believe essential for success.

I believe that a single, regional authority governing Washington National and Dulles Airports, with equal representation from Virginia, Maryland, and the District of Columbia (with provision for federal representation) is the simplest, fairest, and most practical way to provide effective airport management for the Washington region.

Washington National is indisputably a regional airport and should be governed with equal representation from the region's principal governments. Dulles, while currently producing neither the regional benefits nor the burdens in the magnitude of Washington National, nonetheless has substantial regional impact. The fact that the Virginia members of the Commission feel their state would decline to accept sole responsibility for Dulles without National, fearing that Dulles by itself would not be financially viable is a clear indication that the prime importance of Dulles lies not in its geographical location, but rather in its role as a regional air facility.

Viewed separately, Washington National is a more fully regional facility than Dulles. Taken together, the

two airports constitute a regional airport whose collective benefits and burdens have substantial impact on the entire Washington region, including the Maryland as well as the Virginia and District portions. However these benefits and burdens are measured—whether in population, airport patronage, economic development, or environmental impact—the current and potential effect of airport management on any of the three jurisdictions argues strongly for equal representation from each on a regional governing body.

A single regional authority with equal representation is not only fair and workable, it is also the most likely plan both to win the approval of Congress and to advance the spirit of partnership which is essential to effective regional government in the Washington metropolitan area.

**U.S. District Court for the District of Columbia
Plaintiffs' Exhibit 3**

JRB:JEP:JDT:djy

H.R. 5040

[Logo]

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Aug. 6, 1986

Honorable Norman Y. Mineta

Chairman

Subcommittee on Aviation

Committee on Public Works and Transportation

House of Representatives

Washington, D.C. 20515

Dear Chairman Mineta:

At the request of the Department of Transportation we have reviewed several alternatives proposed by your staff as substitutes for H.R. 5040, the "Metropolitan Washington Airports Transfer Act of 1986," which will authorize the Secretary of Transportation to transfer Washington National and Washington Dulles International Airports to an independent Metropolitan Washington Airports Authority (Airports Authority), created by an interstate compact between Virginia and the District of Columbia. These staff proposals would provide for the creation of a board consisting of members of the House and Senate, which would have the authority to disapprove certain decisions made by the Airports Authority, including the adoption of an annual budget, the issuance of bonds, the adoption, amendment, or repeal of a regulation, the adoption of development plans and plans for land acquisition, and the appointment of the General Manager.

Two of the suggestions made by the staff would present substantial constitutional problems. The first of these proposals would create a "Federal Board of Directors," consisting of three members of the House, appointed by the Speaker, three members of the Senate, appointed by the President pro tempore, and the Comptroller General. As proposed, this Federal Board would clearly be unconstitutional. In reality the Federal Board would be no more than a committee of Congress plus the Comptroller General—who is clearly a legislative officer.¹ This committee would be authorized by the bill to veto certain types of actions otherwise within the Airports Authority's power under applicable state law.² In the absence of the Federal Board, the Airports Authority could implement those decisions without further review or approval. Disapproval by the Federal Board of a particular action would thus have "the purpose and effect of altering the legal rights, duties, and relations of persons . . . outside the Legislative Branch," *INS v. Chadha*, 462 U.S. 919, 952 (1983), and would plainly be legislative action that must conform to the requirements of Article 1, section 7 of the Constitution: passage by both Houses and approval by the President. *Id.* at 954-955. Congress cannot directly vest the Federal Board with authority to veto decisions made by the Airports Authority any more than it can authorize one House, one committee, or one officer to overturn the Attorney General's decision to allow a deportable alien to remain in the United States,³ to reject rules implemented by an executive agency pur-

¹ See *Bowsher v. Synar*, — U.S. — (July 7, 1986), slip op. at 11-16.

² Both Virginia and the District of Columbia have enacted into law the provisions of the interstate compact, which create the Authority and vest it with powers to operate the airports. We understand that the compact was entered into pursuant to standing statutory authorization, and therefore no additional congressional approval is needed for the compact or, presumably, for any changes to the compact.

³ *INS v. Chadha*, 462 U.S. at 955.

suant to delegated authority,⁴ to dictate mandatory budget cuts to be made by the President,⁵ or to overturn any decision made by a state agency.⁶

Congress could, consistent with the constitutional scheme, delegate this sort of authority to a board within the executive branch. However, since the responsibilities to be exercised by the Board are clearly operational, participation by members of Congress chosen by the leadership would violate the Incompatibility Clause⁷ and the Appointments Clause⁸ of the Constitution. If the Federal Board were to be established as an executive branch agency, its members would have to be appointed by the President or the head of an executive department or agency,⁹ and members of Congress could serve, if at all, only in an advisory capacity.

⁴ *Consumer Energy Council of America v. FERC*, 673 F.2d 425 (D.C. Cir. 1982), aff'd 103 S.Ct. 3556 (1983).

⁵ *Bowsher v. Synar*, slip op. at —.

⁶ Congress has most often included legislative veto devices in statutes that delegate authority to the executive branch, and consequently litigation over legislative veto issues has involved the sharing of power within the federal government. The Court's decision in *INS v. Chadha* clearly encompasses, however, any legislative action taken by Congress—i.e., any action that affects the "legal rights, duties, and relations of persons . . . outside the Legislative Branch." 462 U.S. at 952. The clear import of *Chadha* is that when Congress legislates in a manner that affects the authority of anyone outside the legislative branch—including the states or private individuals—it cannot retain the authority to alter that legislation through less than the plenary legislative process.

⁷ "[N]o person holding any Office under the United States, shall be a Member of either House during his Continuance in Office."

⁸ "[The President] shall appoint . . . all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law; but the Congress may be Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments." Art. II, section 2, clause 2.

⁹ Congress could, if it chose, require Senate confirmation of such appointments.

Thus, the creation by Congress of the Federal Board and the assignment to the Board of authority to veto decisions made by the Airports Authority are clearly inconsistent with the requirements of the Constitution. The Department of Justice strongly opposes enactment of any such legislation.

A second staff draft would require Virginia and the District of Columbia to establish the Board under state law, as a condition to their acceptance of the transfer of the airports, rather than directly establish and empower the Federal Board. As we understand it, this alternative would provide that the transfer of the airport property may necessitate the enactment by Virginia and the District of Columbia of additional legislation (which would necessarily reflect a change in the underlying compact agreement) to create a new entity whose membership and powers would be identical to the proposed Federal Board.¹⁰ Under this alternative the Board in theory would not exercise Congress's legislative powers, but rather powers granted to it under state law, thereby removing any federal constitutional problem.¹¹

This alternative presents complex and novel questions involving the relationship between federal and state grants of authority. The Supreme Court has long recognized that Congress may place conditions on the transfer of funds or property to the states.¹² See, e.g., *Pennhurst*

¹⁰ Virginia and the District of Columbia may have existing enabling legislation that would authorize the creation of the Board under their laws without a separate enactment.

¹¹ We do not address here whether this alternative would be consistent with applicable state laws. We recommend that counsel for Virginia and the District be given an opportunity to identify any possible legal problems arising from state law.

¹² Congress's power to condition the transfer of federal property arises from the grant in Article IV, section 3, clause 2 of authority to Congress to "dispose of and make all needful Rules and Regulations respecting the . . . Property belonging to the United States."

State School and Hospital v. Halderman, 451 U.S. 1, 17 (1981) (Congress may "fix the terms on which it shall disburse federal money"); *Oklahoma v. United States Civil Service Commission*, 330 U.S. 127, 143 (1947); *United States v. San Francisco*, 310 U.S. 16, 29-30 (1940) ("Congress may constitutionally limit the disposition of the public domain to a manner consistent with its views of public policy."). The Court has also long recognized, however, that Congress cannot attach unconstitutional conditions to a legislative benefit or program merely because it has authority to withhold the benefit or power entirely. For example, Congress could, if it chose, bar aliens from our shores, but could not admit them under conditions which deprive them of constitutional rights such as the right to a fair trial. *Wong Wing v. United States*, 163 U.S. 228, 237 (1896). The requirement that the Senate consent to appointments of executive officers does not, by inference, empower the Senate to exert control over the removal of officers once approved (see *Myers v. United States*, 272 U.S. 52, 126 (1926)), any more than the Senate's power to advise and consent to ratification of treaties can be used to override the requirements of the Constitution. See *Reid v. Covert*, 354 U.S. 1, 16-17 (1957). See also, *Geofroy v. Riggs*, 133 U.S. 258, 267 (1890); *The Cherokee Tobacco*, 78 U.S. (11 Wall.) 616, 620-621 (1871); *Fourteen Diamond Rings v. United States*, 183 U.S. 176, 183 (1901) (Brown, J., concurring). *A fortiori*, Congress could not use its constitutional authority to place conditions on the disposition of federal property to achieve an unconstitutional result.

It is not entirely clear, however, whether creation by the states of the Federal Board would be an unconstitutional result. For example, both staff drafts currently provide, in somewhat analogous terms, that the transfer of the airports is conditioned on establishment of the Airports Authority as "a public body corporate and pol-

itic, having the powers and jurisdiction as are conferred upon it jointly by the legislative authority of the Commonwealth of Virginia and the District of Columbia . . ." and on imposition by the states of certain "minimum" requirements on the powers and rights of the Authority.¹³ If Congress were to create this Authority directly, rather than the states, we would undoubtedly view the Authority as a federal agency whose members would have to be appointed pursuant to the Appointments and Incompatibility Clauses and that would be subject to all other federal constitutional requirements. Because its powers and duties derive directly from state, rather than federal law, however, the Airports Authority is insulated from federal constitutional objection.

Based on this analogy, a colorable argument can be made that Congress could require the states, as a condition to transfer of the airports, to establish the Federal Board under state law and to vest it with the power to veto decisions made by the Authority. The Board would differ from the Airports Authority in that its members would have to be congressmen, and would be appointed by the congressional leadership rather than by the participating states and the President.¹⁴ In the absence of other factors, we would not ordinarily find any federal

¹³ These include, for example, that the Airports Authority be "independent" of state and local governments; that it be constituted "solely to operate both Metropolitan Washington Airports as primary airports serving the Metropolitan Washington area;" that it be authorized to acquire and maintain the airport property, to issue bonds secured by revenues, to acquire other real and personal property, and to levy fees and charges; that it be subject to certain conflict-of-interest provisions; and that it be governed by a board of 11 members appointed by the Governor of Virginia, the Mayor of the District of Columbia, the Governor of Maryland, and the President from among individuals who do not hold elective or appointive political office.

¹⁴ By contrast, members of the Airports Authority may not hold elective or appointive office.

constitutional objection to designation by the states of members of Congress to exercise state legislative authority. If otherwise permitted under state law,¹⁵ for instance, we believe members of Congress could be appointed to state regulatory agencies or other state executive positions.

Nonetheless, given the evident purpose of the Federal Board as it would be constituted, and the context in which the creation of the Board is being considered, we have grave reservations whether the Board is constitutional. The Supreme Court made clear in *Chadha* that Congress may place limitations on the scope of the authority it delegates to the executive branch and may designate which executive officers shall exercise that authority; what Congress cannot do, however, is to delegate authority to one of its houses, committees, or officers to veto particular decisions made pursuant to that delegated authority—in effect, to retain day-to-day control over the exercise of executive authority. See *INS v. Chadha*, 462 U.S. at 955 ("Congress must abide by its delegation of authority until that delegation is legislatively altered or revoked.") *Chadha* makes clear that "once Congress makes its choice in enacting legislation, its participation ends. Congress can thereafter control the execution of its enactment only indirectly—by passing new legislation." *Bowsher v. Synar*, slip op. at 18.

By analogy, Congress can impose conditions on the transfer of public property that limit the manner in which that property may be used and designate which state or federal executive officers may make decisions about use of the property. The proposed condition requiring establishment of the Airports Authority and specifying its powers and duties thus presents no *Chadha*

¹⁵ As we noted above, there may be statutory or constitutional impediments that arise under state law. We do not address that question here.

problem. However, the proposed Federal Board is significantly different from the Airports Authority in that it would clearly be intended to be an agent of Congress, and to exercise direct congressional oversight authority over the Board.¹⁶ Even though the Board would be created under state law and would theoretically derive its authority from state law, in form and substance it would be a creation of Congress, intended to exercise legislative authority on behalf of Congress. We believe that the courts would view this Board as an attempt by Congress to circumvent the clear requirements of Article 1, section 7, in controlling operational decisions made by the Airports Authority. The willingness of the involved states to agree to the condition, while perhaps sufficient to avoid any subsequent objections based on state sovereignty,¹⁷

¹⁶ As currently proposed, we believe the Board would be considered to be an "agent of Congress," acting on Congress's behalf and at its behest. The Board would consist of members of Congress designated in their official capacity, appointed by (and therefore subject to removal by) the congressional leadership. As the Supreme Court noted recently in *Bowsher v. Synar*, slip op. at 14, the ability to remove an individual from office "dictate[s] that he will be subservient to Congress." The Board would thus clearly be answerable to Congress, rather than to Virginia or the District of Columbia, even though created under state law. Moreover, the language of the bill recites Congress's express intent to assure "adequate congressional oversight of airport operation and development in the Federal interest." Finally, we cannot ignore that the alternative requiring the states to establish the Board has been proposed precisely to avoid the clear constitutional objections raised by any direct effort by Congress to establish and empower the Board—a context that strongly suggests Congress intends the Board, however authorized, to act as its agent.

¹⁷ As discussed above, the Supreme Court has repeatedly upheld, in broad terms, Congress's authority to impose conditions on the exercise of authority to spend funds and transfer property. But the question addressed in those cases has been whether, having accepted the benefit of the federal funds or property, the state had a "sovereign right to retain [the benefit] without complying with those conditions." *Bell v. New Jersey*, 461 U.S. 773, 791 (1983). To the extent those cases are relevant here they establish

would not change the fact that Congress is unwilling to give its consent to the transfer unless it is able to retain some direct control, through its agents, over use of the property. This is precisely the sort of "appealing compromise" that the Court has found inconsistent with the constitutional scheme for legislation. *INS v. Chadha*, 462 U.S. at 958; see also *Bowsher v. Synar*, slip op. at 18.

If it were not as clear that this proposed alternative is intended to give Congress, *qua* Congress, continued direct control over operation of the airports, the argument in favor of its constitutionality would be strengthened. As the Board would be established, it would be difficult to escape the conclusion that the members serve in their official legislative capacities, as representatives of Congress as a whole. However, members of Congress certainly constitute a significant user group of the two airports, and it would perhaps not be inappropriate for them to have a voice in the operational decisions in their individual capacities. For example, it might be possible for Congress to require the states to establish a board composed of representatives of user groups, such as members of Congress, to oversee decisions made by the Airports Authority.¹⁸ If it were made clear that those members serve only in an individual capacity, to represent their personal interests in the operation of the airports, rather than as agents of Congress, we do not believe a *Chadha* problem would necessarily be presented. In our judgment, the best way to disassociate the Board

only that Virginia and the District of Columbia could not accept the transfer of the airports and then refuse to comply with the condition requiring establishment of a Federal Board on the ground that the condition infringes their state sovereignty.

¹⁸ A board consisting solely of, and designated by, members of Congress, with veto authority over decisions made by the Airports Authority, would be problematic in light of *Chadha*, and in this regard, we do not believe that merely designating members of Congress as "users," without placing their appointment to the Board outside of Congress, would be sufficient to overcome our objection.

from Congress would be to vest appointment and removal authority in someone other than the congressional leadership. Moreover, language should be included in the bill or its legislative history which articulates the importance of the airports to individual congressmen, because of their frequent use, and specifically stating that the congressional members of the Board shall represent only their personal interests.¹⁹

In that regard, the third draft suggested by your staff does not present the same constitutional objection as the two earlier drafts. Under this alternative, the participating states (including the District of Columbia) would be required to establish, as a condition of leasing the airports, a "Board of Review" consisting of four members of the House of Representatives and four members of the Senate. This Board would have the same authority to disapprove actions taken by the Airports Authority as would the Federal Board proposed under the other staff drafts. The members of the Board would serve in their individual capacity as users of the airport and not as representatives of Congress, and would be appointed by the Board of Directors of the Airports Authority from names submitted by the Speaker of the House and the President pro tempore. Even though as a practical matter the Speaker and the President pro tempore will be able to exercise some influence over the appointment by choosing the names on the required lists, we do not view that limitation as one of constitutional dimension. Analogously, we have not historically objected to statutes providing that the President make appointments of executive officers from lists provided by Congress, so long as the President is free to request additional names if

¹⁹ We caution, however, that if such a board were established, the congressional members would have to take care to distinguish between their respective roles as members of Congress and as member of the board. We also note that we have not reviewed whether the applicable ethics rules of the House and Senate would pose any bar to such membership.

he does not find a list satisfactory. We assume the same flexibility will be accorded the Airports Authority.

Although the issue is not free from doubt, we believe that with the revisions made by this third draft, the proposal will withstand constitutional scrutiny. An explicit recitation in the bill that the members of Congress serve only in their individual capacity, as users of the airports, will serve as a clear indication that Congress does not intend the Board to function as an adjunct or agent of Congress *qua* Congress—i.e., Congress acting in its legislative capacity. We assume that this understanding will be discussed in some detail in the legislative history of the bill. Importantly, vesting final appointment and removal authority in the Board of Directors of the Airports Authority, disassociates the Board from the direct control and supervision of the congressional leadership.

For the foregoing reasons, we would not object on constitutional grounds to enactment of the provision contained in the third staff draft. We defer to the Department of Transportation as to the merits of the proposal.

The Office of Management and Budget has advised this Department that there is no objection to submission of this report from the standpoint of the Administration's program.

Sincerely,

/s/ John R. Bolton
JOHN R. BOLTON
Assistant Attorney General

**U.S. District Court for the District of Columbia
Plaintiffs' Exhibit 7**

**METROPOLITAN WASHINGTON AIRPORTS
AUTHORITY
BOARD OF DIRECTORS MEETING**

MINUTES OF JUNE 3, 1987

The regular meeting of the Board of Directors of the Metropolitan Washington Airports Authority was held on June 3, 1987, in the West Building at Washington National Airport. The meeting was called to order by the Chairman at 9 a.m.

PRESENT

Ten members of the Board were present:

Bette Anderson
Michael Barnes
Linwood Holton
Ron M. Linton
Elijah Rogers
Polly Shackleton
T. Eugene Smith
Thomas P. Smith
William Thomas
Carrington Williams

Mr. Jack Edwards, nominated as the Presidential appointee, was also in attendance.

The first order of business was approval of the previously distributed minutes of the meeting held on May 6. Governor Holton noted that the minutes as written were not to be construed to mean that the Board would not examine the Master Plan for Washington Dulles. The minutes were approved.

Following the agenda of the meeting, (copy enclosed), under agenda item II, Committee Reports, the Chairman called for reports of the various committees.

Ms. Bette Anderson, Chairperson of the Finance Committee reported the following:

The Finance Committee has met twice since the last Board Meeting. At the May 22 meeting, the Finance Committee reviewed the four month Transition Period Financial Plan which had been prepared by the Metropolitan Washington Airports (MWA) staff. With some modifications, the Committee supported that plan. A copy of the Financial Plan, as endorsed by the Committee, was enclosed in the material which was forwarded to each Board Member for today's meeting. At the appropriate time, Ms. Anderson noted that she was prepared to move the adoption of that plan, with a Resolution which was also included in the mailing for today's meeting.

The Finance Committee met again on May 28, to consider the Authority's insurance program. This is one of the areas which the full Board had delegated to the Finance Committee. Using that delegation, the Finance Committee had also earlier authorized award of several contracts for employee health and life insurance. At the May 28 meeting, the Finance Committee reviewed various options available for other necessary insurance coverages and authorized the MWA staff to proceed to place insurance in a variety of areas, with the major items being the Airport Liability, Property, and Workers' Compensation coverages. These coverages are being placed this week and will be in effect by the planned transfer date, June 7.

The Finance Committee has not yet approved placement of coverage for Public Officials liability. The quotes received were very expensive. The Committee

is further pursuing that item with the hope of having coverage placed in the very near future.

Mr. Ron Linton, Chairman of the Operations Committee, reported that the Committee had met since the last Board Meeting and minutes from that meeting had been distributed to all Board Members. The Committee's initial focus will be on air safety matters at the two airports. The Committee and MWA staff are planning to develop a study session and Board Members will be advised when this will take place.

Mr. Carrington Williams, Chairman of the Planning Committee, reported that the Committee is endeavoring to find a date when a considerable amount of time could be spent with the professional planners, architects and engineers to discuss fully the Master Plan for Washington Dulles. The dates of July 11, 18, and 25 have been determined as being available with the various consultant firms for the Dulles session. The MWA staff will be contacting the Board Members to determine which, if any, of those dates is most convenient for the Board Members.

Turning to the information items under agenda item III, Mr. Edward Faggen reported on the status of legislation in the local jurisdictions. He noted that the D.C. Council had taken final action this past Tuesday to amend the enabling legislation and it was expected to be signed by the Mayor. On June 1, the Loudoun County Board of Supervisors adopted an Ordinance that would apply to certain County Ordinances at Dulles. On June 6, Arlington County is expected to adopt a similar amendment to their Ordinances.

Under agenda item IIIb, progress report on other transfer activities, Mr. Wilding reported that 93 percent of the MWA work force had opted to transfer with the Authority. Of the 93 percent, 83 percent were straight trans-

fers and 10 percent were those individuals who would be retiring and returning.

Governor Holton inquired about the status of the Lease. Mr. Faggen reported that Governor Baliles is expected to sign it before Saturday night. The Mayor of the District has signed it.

Mr. Wilding noted that the Lease identified a number of items which had to be accomplished before the Lease became effective. He indicated that there were a few of those items remaining and, once all were accomplished, Secretary Dole and Governor Holton would be asked to execute a certification document to that effect.

On agenda item IIIc, report on use of direct hiring authority, Mr. Wilding reported that there wasn't anything new to report since the last meeting. Overall, this authority had been used in 31 instances and since it was an interim measure pending the transfer, this would be the last report.

Mr. Linton inquired as to whether we were moving on hiring additional police and firefighters. Mr. Wilding responded by saying we were hiring ten additional firefighters effective the following Monday and that a lot of work was being done in these areas.

On agenda item IIId, current concession and construction activities, Mr. Wilding noted that Mr. Thomas Smith had suggested at the May Board Meeting that a list of concession type solicitations be developed. This has been done and was in the folder before them. It will continue to be updated on a regular basis. Mr. Wilding also noted that the airport traffic statistics for April were in the folder before them.

Governor Holton then introduced Mr. Najeeb Halaby, President of DartRAIL who presented a briefing on DartRAIL, a proposed 16.7 mile light rail system beginning at the West Falls Church Metro station and ending at Washington Dulles International Airport's main terminal.

DartRAIL, as proposed, would be constructed on the median strip dividing the Dulles Access Road. Mr. Halaby encouraged the Board to give their support to the transportation system.

Governor Holton told the DartRAIL representatives that he admired the innovative initiatives that DartRAIL had produced, noting that there were still a lot of unanswered questions.

Mr. Thomas suggested that the Planning Committee consider what the Authority should be doing now to pursue some type of rapid rail to Dulles (not necessarily DartRAIL).

Mr. Wilding noted that this raises some serious priority questions because there are so many issues to which the Authority needs to be devoting their energies and resources.

Governor Holton said the Planning Committee should take a preliminary look at rail systems and present a recommendation to the Board, taking into account Mr. Wilding's viewpoint.

Mr. Faggen reported on agenda item IVa, adoption of two additional regulations, (1) landing fee rule and (2) weapons rule. Mr. Faggen reported that the FAA had now completed the modification of these two regulations, as had been forecast at the time the Board adopted the other regulations.

Mr. Williams moved the adoption of the following Resolution and it was unanimously passed:

RESOLVED, That the regulations of the Federal Aviation Administration, Metropolitan Washington Airports in Federal Aviation Regulations, Sections 159.79, 159.181, 159.183, 159.184, and 159.185 as they are effective on June 6, 1987, are hereby adopted by the Metropolitan Washington Airports Authority with the force and effect of law as of the effective

date of the transfer of the Airports to the Metropolitan Washington Airports Authority.

Further, until the Airports regulations are recodified, they shall be cited as the Metropolitan Washington Airports Regulations §§ 159.1 et seq.

Under agenda item Va., delegations of authority, Mr. Linton noted that the Operations Committee was working with the MWA staff on non-financial items and would examine policies to see whether there were any recommendations that needed to be brought before the full Board. It was noted that the General Manager needed the necessary "tools" to carry out the operations of the airports.

Mr. Thomas suggested and it was agreed that under item d., in the delegations package, which had been previously distributed to the Board Members, that the language be changed to delete the phrase "easements and rights of way."

On page 2 under item b., of this package, Mr. Rogers suggested and it was agreed that the dollar amounts be cut in half and the General Manager could approve these sums. Anything in between the lower amount and the figures as previously shown would need approval of the Finance Committee. Anything above the figures previously shown would need to have the full Board's approval.

Mr. Rogers moved the adoption of the following Resolution and it was unanimously passed:

RESOLVED, That the General Manager of the Metropolitan Washington Airports Authority is hereby delegated the authority of the Board, subject to the limitations expressed herein:

a) to manage the operation of Washington National and Washington Dulles International Airports, including hiring, administering and organizing the

staff to maintain, improve, operate, protect, and promote the airports,

b) to acquire, by purchase, lease or otherwise, goods, services, and property, consistent with an approved financial plan or budget,

c) to provide for the use of airport property by airlines and other commercial enterprises, non-commercial and governmental entities for aviation business or activities, or activities necessary or appropriate to serve passengers or cargo in air commerce, including concession agreements, or for non-profit public use facilities,

d) to grant licenses and permits pertaining to the use of airport property,

e) to enter into, administer, modify and terminate contracts and agreements legally binding upon the Authority for the purposes set out in paragraphs a through d,

f) to expend Authority funds for the purposes set out in a through d,

g) to redelegate and authorize further redelegation and cancel any such redelegation as he considers appropriate,

h) to issue directives to implement the above.

Limitations:

a) All authority delegated herein shall be exercised in accordance with the laws, regulations and bylaws applicable to the Authority and applicable resolutions of the Board of Directors.

b) The acquisition of goods, services, and property shall be accomplished in accordance with the permanent procedures and limitations to be adopted by the Board which will include a program for obtain-

ing contracts with minority and women owned businesses.

1. Pending the adoption of this permanent procedure, Board approval is required: i) before the solicitation and before the award of any contract to acquire goods, services, and property at a cost to the Authority of \$200,000 or more, or any concession contract which is anticipated to generate annual revenue to the Authority of \$100,000 or more, ii) before solicitation for a contractor to perform construction for the Authority that will cost the Authority \$1,000,000 or more, and iii) before approval of tenant construction that will cost the tenant \$1,000,000.

2. Pending the adoption of permanent procedures on matters for which Board approval is not required, approval of the Finance Committee of the Board is required: i) before the solicitation and before the award of any contract to acquire goods, services and property at a cost to the Authority of \$100,000 or more, or any concession contract which is anticipated to generate annual revenue to the Authority of \$50,000 or more, ii) before solicitation for a contractor to perform construction for the Authority that will cost the Authority \$500,000 or more, and iii) before approval of tenant construction that will cost the tenant \$500,000 or more.

c) The delegation does not include authority for the acquisition or sale of real property or the grant of easements.

d) Notwithstanding these delegations, the Board may expressly reserve any specific management or contracting matters and decisions to itself or to a duly constituted committee.

e) The General Manager shall present the Board with a plan for staffing the airports. All selections

for positions reporting directly to the General Manager shall be subject to approval by the Board.

Under agenda item Vb., adoption of Transition Period Financial Plan, Ms. Anderson moved the adoption of the proposed Resolution with a change suggested by Mr. Thomas. The following Resolution was unanimously passed:

RESOLVED, That the Transition Period Financial Plan is hereby adopted, the General Manager is authorized to incur and liquidate direct expenses for the transition period of June 7, 1987, through September 30, 1987, in a total amount not to exceed \$21,484,000 for the care, operation, maintenance, construction, improvement, and protection of Washington National and Washington Dulles International Airports, and the General Manager is authorized to adjust or modify the financial plan in a manner generally consistent with the Plan and within the level approved herein.

Turning to agenda item Vc., appointment of Board of Review, Governor Holton said that letters had been received from the Speakers of the United States House of Representatives, Thomas O'Neill and from Jim Wright, (copies enclosed) recommending the following for the Board of Review:

Honorable Silvio O. Conte, Committee on Appropriations

Honorable William Lehman, Committee on Appropriations

Honorable Lawrence Coughlin, Committee on Appropriations

Honorable John Paul Hammerschmidt, Committee on Public Works and Transportation

Honorable Norman Y. Mineta, Committee on Public Works and Transportation

Honorable Newt Gingrich, Committee on Public Works and Transportation

Honorable Dan Rostenkowski, House of Representatives

Governor Holton recommended the adoption of the following Resolution which was unanimously passed:

RESOLVED, That in accordance with Article IV of the Bylaws of the Metropolitan Washington Airports Authority, each of the following named individuals having been properly recommended by the Speaker of the United States House of Representatives, the Board of Directors hereby appoints

from the Committee on Appropriations, the Honorable Silvio O. Conte and the Honorable William Lehman,

from the Committee on Public Works and Transportation, the Honorable John Paul Hammerschmidt and the Honorable Norman Y. Mineta,

from the House of Representatives, the Honorable Dan Rostenkowski, to serve on the Board of Review of the Airports Authority as representatives of the users of the Metropolitan Washington Airports.

Further, these appointments shall be effective on the effective date of the Lease between the Airports Authority and the United States for the Lease of the Metropolitan Washington Airports. The terms of each of these appointments was determined by a drawing, and is as follows, except that the Board of Directors may remove for cause an appointee to the Board of Review prior to the conclusion of his term:

The Honorable Silvio O. Conte	2 years
The Honorable William Lehman	4 years
The Honorable John Paul Hammerschmidt	6 years
The Honorable Norman Y. Mineta	6 years
The Honorable Dan Rostenkowski	2 years

As yet, no names have been received from the Senate.

Under agenda item Vd., adoption of existing labor agreements, Mr. Linton pointed out that a section in the Lease required that the Board continue certain activities, namely, to adopt all labor agreements which are in effect on the effective date of the Lease and to provide for certain rights for employees of the FAA, MWA, who transfer to the Authority and who are terminated by the Authority during the first five years. He made a motion to adopt both Resolutions as previously distributed to the Board. This was unanimously passed. Mr. Thomas asked that the minutes reflect that this action was being taken only because it was required by the Federal legislation and reflected in the Lease.

At 10:20 am., the meeting was adjourned and the Board went into executive session to discuss personnel matters.

3 Enclosures

Submitted by /s/ June G. Anderson
JUNE G. ANDERSON
Secretary (Acting)

**U.S. District Court for the District of Columbia
Plaintiffs' Exhibit 9**

RESOLUTION NO. 87-12

**METROPOLITAN WASHINGTON
AIRPORTS AUTHORITY
RESOLUTION**

RESOLVED, That in accordance with Article IV of the Bylaws of the Metropolitan Washington Airports Authority, each of the following named individuals having been properly recommended by the Speaker of the United States House of Representatives, the Board of Directors hereby appoints

from the Committee on Appropriations, the Honorable Silvio O. Conte and the Honorable William Lehman,

from the Committee on Public Works and Transportation, the Honorable John Paul Hammerschmidt and the Honorable Norman Y. Mineta,

from the House of Representatives, the Honorable Dan Rostenkowski, to serve on the Board of Review of the Airports Authority as representatives of the users of the Metropolitan Washington Airports.

FURTHER, these appointments shall be effective on the effective date of the lease between the Airports Authority and the United States for the lease of the Metropolitan Washington Airports. The terms of each of these appointments is as follows, except that the Board of Directors may remove for cause an appointee to the Board of Review prior to the conclusion of his term:

The Honorable Silvio O. Conte	2 years
The Honorable William Lehman	4 years
The Honorable John Paul Hammerschmidt	6 years
The Honorable Norman Y. Mineta	6 years
The Honorable Dan Rostenkowski	2 years

/s/ June G. Anderson
 JUNE G. ANDERSON
 Acting Secretary

(Adopted at MWAA Board Meeting, June 3, 1987)

U.S. District Court for the District of Columbia
 Plaintiffs' Exhibit 20

METROPOLITAN WASHINGTON
 AIRPORTS AUTHORITY
 BOARD OF REVIEW

Washington National Airport
 Washington, D.C. 20001

MINUTES OF AUGUST 6, 1987

The first meeting of the Board of Review of the Metropolitan Washington Airports Authority, convened at the call of the Authority, was held Thursday, August 6, at 8:45 a.m. in Room 2167 of the Rayburn House Office Building. Four members were present. As the Senate members had not yet been appointed, a quorum was present.

Members Present:

John Paul Hammerschmidt
 William Lehman
 Norman Y. Mineta
 Dan Rostenkowski

Absent:

Silvio O. Conte

Authority Officers Present:

James A. Wilding, General Manager
 Walter B. Hobart, Jr., Manager,
 Administrative Systems
 Gregory Wolf, Secretary and Counsellor to the
 Board of Directors

Matters Pending Review

1. Appointment of James A. Wilding as General Manager and Chief Executive Officer of the Authority. Action taken by the Board of Directors at its regular meeting May 6, 1987; transmitted to the Board of Review by Linwood Holton, Chairman, Board of Directors, June 8, 1987.
2. Adoption of an Annual Budget for Fiscal year 1988 (October 1, 1987-September 30, 1988). Action taken by the Board of Directors at a special meeting July 22, 1987; transmitted to the Board of Review by Linwood Holton, July 23, 1987.

The Secretary, Mr. Wolfe, called the meeting to order and requested nominations for Chairman. Mr. Hammer-schmidt nominated Mr. Mineta; Mr. Rostenkowski seconded. Nominations were then closed on the motion of Mr. Lehman, and Mr. Mineta was unanimously elected by a voice vote. He immediately assumed the chair.

The Board proceeded to consider the Fiscal year 1988 Annual Budget. Mr. Wilding provided a general briefing, and he and Mr. Hobart responded to questions. The Board then unanimously approved the Director's adoption of the annual budget, thus terminating the 30-day review period.

The Board thereupon went into executive session to consider the appointment of James A. Wilding as General Manager and Chief Executive Officer of the Authority. When the regular session resumed, the Chairman announced that the Board had unanimously approved the Directors' appointment of Mr. Wilding.

The Chairman announced that he would defer discussion both on the establishment of the position of Vice Chairman and on the employment of staff to the Board of Review until the rest of the Board had been appointed. He also requested that the Authority provide informa-

tion about its organization to the Board of Review members, and that briefings and tours of the facilities be arranged. Mr. Wilding advised that the Board of Directors had on August 5 approved amendment to the Authority's taxicab regulations, and that they would be forwarded soon to the Board of Review.

There being no further business, the meeting was adjourned at 9:45 a.m.

Respectfully submitted:

/s/ Gregory Wolfe
GREGORY WOLFE
Secretary

approved
February 24, 1988
GW

**U.S. District Court for the District of Columbia
Plaintiffs' Exhibit 8**

**METROPOLITAN WASHINGTON
AIRPORTS AUTHORITY**

Washington National Airport
Washington, D.C. 20001

BOARD OF DIRECTORS MEETING

MINUTES OF SEPTEMBER 2, 1987

The regular monthly meeting of the Metropolitan Washington Airports Authority Board of Directors was held in the West Building at Washington National Airport on September 2, 1987 and called to order by the Chairman at 9:00 a.m. The following nine members of the Board and the as yet unconfirmed Presidential nominee were present:

Bette B. Anderson
Michael D. Barnes
Linwood Holton, Chairman
Ron M. Linton
Elijah Rogers, Vice Chairman
T. Eugene Smith
Thomas P. Smith
William Thomas
Carrington Williams
Jack Edwards (Presidential nominee)

The Secretary and the following Authority officers were also present:

James A. Wilding, General Manager
Hugh Riddle, Jr., Deputy General Manager
Edward S. Faggen, Legal Counsel

The first order of business was approval of the previously distributed minutes of the last regular monthly meeting, held August 5, 1987. The minutes were unanimously approved.

In accordance with the Authority's bylaws, the Chairman called for nominations for Chairman and Vice Chairman. A motion made by Eugene Smith that the present Chairman and Vice Chairman be reelected for another one-year term was adopted unanimously.

The Chairman then called for reports of the Finance, Operations and Planning Committees.

Finance Committee Chairman Bette Anderson reported that, although several Committee members were unable to attend, the Committee had met August 19, 1987, and had discussed with the staff a number of issues the Committee planned to act on at its September meeting. They included: obtaining directors' and officers' liability insurance, which is not included in the original insurance coverages for the Authority; selecting a second fixed base operator at Dulles; and continuing the Price Waterhouse contract for support services to the Authority during the transition period.

The Finance Committee also reported on the need to expedite contract solicitations for bond counsel, feasibility consultant, outside auditor, and program manager. Ms. Anderson stated that she was prepared to move the adoption of a resolution delegating authority to the Finance Committee to approve these solicitations at the appropriate time.

Replacement of one of the fire engines demolished in an accident on August 4, 1987, had also been discussed at the Finance Committee meeting. Two alternative Resolutions for replacing this vehicle would be offered.

Ron Linton, Operations Committee Chairman, reported that the Committee had not met because a quorum could

not be assembled. The Committee would meet on September 17, 1987, and a report would be ready for the next Board meeting.

Planning Committee Chairman Carrington Williams reported that the Committee held a lengthy meeting on August 28, 1987, chiefly to address the status of master planning at National. Several Dulles issues had also been discussed, including the decision to proceed with moving sidewalks in the midfield terminal design and close-in parking access alternatives, including decked parking, without impacting the aesthetics of the Saarinen terminal. Further exploration by the architects would be requested in order to achieve an acceptable compromise. Mr. Williams stated that this would be an issue the Authority must confront, and noted that there are strong Board member opinions on both sides.

Mr. Williams also reported that Howard, Needles, Tammen & Bergendoff (HNTB) had provided the Planning Committee with an update on the Master Plan for Washington National. The consensus of the Committee was that the reported status of the new terminal road network and configuration of airline gates was "as good a compromise as could be worked out." At the request of Board Members, HNTB had developed a preliminary design concept that would connect the Metro station and parking structure with an enclosed bridge structure instead of a tunnel, as previously proposed. Further presentations would be made to the full Board as the Plan develops. Mr. Williams then called on Mr. Wilding for additional comments.

Mr. Wilding reported that Skidmore, Owings & Merrill (SOM) had resumed work on a Dulles midfield terminal design. He noted that moving sidewalks in the midfield terminal will be a "bit expensive." SOM had already been instructed to include them in the design.

Governor Holton commented that he was pleased with the decision to include moving sidewalks in the midfield ter-

minal design. He also expressed satisfaction with the layout of the new terminal building at Washington National, noting that it is centered on the subway platform, with escalators at the north and south ends of the Metro station and parking behind the elevated Metro structure. He said this is exactly what is needed.

Mr. Williams noted that the terminal, as planned, would be about 250 feet closer to the Metro station than the current North Terminal.

Mr. Linton also endorsed the bridge proposal. He took exception to the *Washington Post* account of the last regular Board meeting, objecting to the report that the Dulles Master Plan had been approved with minor changes. He asked that these minutes clarify it had not been his understanding or intention to approve and accept the Plan as it now stands.

Mr. Holton responded that the minutes of that meeting report the Master Plan had been approved and that only access and parking had not been fully accepted.

Mr. Eugene Smith observed that the limited development options available at National would lead more easily to unanimity there than at Dulles.

Mr. Wilding reported that as of Monday night, August 31, 1987, the Authority had \$3.9 million on deposit. Since the transfer on June 7, 1987, income had been roughly \$16 million and expenditures about \$12 million.

Mr. Wilding also mentioned that construction was under way at Dulles on the extension of one of the interim midfield terminals, built by Presidential and now occupied by Continental. Under an agreement with Continental, American Airlines had funded and occupied four gates of the expansion. As of noon that day, American Airlines' flights were to be in service from its portion of the interim midfield terminal. By the middle of the following week, Continental's portion of the expansion

would be operational. Construction of the ramp portion of United's nine-gate extension of its interim midfield terminal had begun the previous week and was scheduled for completion next Spring. Trans World Airlines will fund and occupy four gates at that facility.

Mr. Wilding also reported United would establish new, non-stop service from Dulles to Nassau at the end of October, a significant improvement to the Dulles service pattern.

Mr. Riddle summarized the traffic statistics already provided to the Board Members, noting that Washington National's passenger traffic was up 11.2 percent for the month of July and 7.3 percent for the preceding 12 months. The growth trend has been continuing from last year after a number of years of unsteadiness. The passenger count was at 15.3 million for the year and was likely to eclipse the previous high in 1979. Washington Dulles's passenger count was up 14.7 percent for the month of July and 56.3 percent for the preceding 12 months. It was at 11.3 million for the 12-month period. Air carrier operations for the month of July at Dulles were a little over 17 thousand, compared to 16 thousand at National. Mr. Riddle noted that National, however, slightly exceeds Dulles in total operations.

Mr. Riddle then reported on the proposal to establish a Terminal Control Area (TCA) at Dulles. The Federal Aviation Administration had announced its intention to establish a TCA at Dulles and another at Baltimore/Washington International Airport. Washington National already had a TCA. Seven other new airports, also announced as candidates for TCAs, would be added to the 23 airports that currently have them. Mr. Riddle added that all airplanes operating in a TCA must have electronic gear that reports the plane's altitude and position to air traffic controllers, and must be subject to positive control. He also commented that the proposed establishment of a TCA at Dulles reflected growth at that air-

port. Mr. Riddle advised that we would be likely to see some controversy about the new TCAs in the coming months as the Notice of Proposed Rulemaking works its way through the federal government.

In the absence of questions, comments or unfinished business, the Chairman turned to new business.

Governor Holton reported that a letter from the President *pro tempore* of the Senate nominating Senate members to the Board of Review had been delivered to his office after close of business August 4, 1987, but that he had not learned of it until some time after the last Board meeting on August 5. Only four names had been submitted. He reported that the Board of Review, operating with the previously appointed House members only, had met with MWAA staff and approved the appointment of Mr. Wilding as General Manager and the Authority's FY 1988 budget.

After discussing the alternatives open to the Board, including requesting additional Senate nominees, and rejecting one or more of the nominees, a motion made by Mr. Linton that the Resolution appointing the four Senate members to the Board of Review be adopted was unanimously accepted. The Resolution is as follows:

RESOLVED, That in accordance with Article IV of the bylaws of the Metropolitan Washington Airports Authority, each of the following named individuals having been properly recommended by the President *pro tempore* of the United States Senate, the Board of Directors hereby appoints:

from the Committee on Appropriations, the Honorable Robert C. Byrd and the Honorable Ted Stevens; from the Committee on Commerce, Science, and Transportation, the Honorable Ernest F. Hollings and the Honorable Nancy L. Kassebaum;

FURTHER, that these appointments and the appointments previously made in Resolution 87-12 shall

be effective as of June 3, 1987. The terms of each of these appointments are as follows, except that the Board of Directors may remove for cause an appointee to the Board of Review prior to the conclusion of this term:

The Honorable Robert C. Byrd	2 year term
The Honorable Nancy L. Kassebaum	4 year term
The Honorable Ted Stevens	6 year term
The Honorable Ernest F. Hollings	6 year term

The term of each was determined by a drawing conducted by Governor Holton immediately after adoption of the resolution.

Mr. Wilding noted that two alternative Resolutions concerning replacement of the fire truck had been mailed with the agenda. He proposed adoption of the second, authorizing the General Manager to approve the purchase of a new truck. He anticipated a decision could be reached at the end of the week.

Mr. Eugene Smith moved the adoption of the following Resolution, which the Board agreed to unanimously:

RESOLVED, that the Board delegates authority to the General Manager to purchase an aerial ladder truck to replace the Authority firefighting vehicle demolished on August 4, 1987.

Ms. Anderson moved the following Resolution delegating authority to the Finance Committee, which the Board agreed to unanimously:

RESOLVED, that the Board of Directors delegates to the Finance Committee the authority to approve the issuance of solicitations for Bond Counsel, Feasibility Consultant, Outside Auditor, and Program Manager.

Governor Holton then requested that the Board go into executive session to discuss informational items. He noted that because the Board would not be taking any

formal action in executive session, there would be no further public session.

There being no further business, the meeting adjourned at 9:26 a.m.

Respectfully submitted:

/s/ Gregory Wolfe
GREGORY WOLFE
Secretary and Counsellor
to Board of Directors

U.S. District Court for the District of Columbia
Plaintiffs' Exhibit 10

RESOLUTION NO. 87-27

METROPOLITAN WASHINGTON
AIRPORTS AUTHORITY

RESOLUTION

RESOLVED, That in accordance with Article IV of the bylaws of the Metropolitan Washington Airports Authority, each of the following named individuals having been properly recommended by the President *pro tempore* of the United States Senate, the Board of Directors hereby appoints:

from the Committee on Appropriations, the Honorable Robert C. Byrd and the Honorable Ted Stevens; from the Committee on Commerce, Science, and Transportation, the Honorable Ernest F. Hollings and the Honorable Nancy L. Kassebaum;

FURTHER, that these appointments and the appointments previously made in Resolution 87-12 shall be effective as of June 3, 1987. The terms of each of these appointments are as follows, except that the Board of Directors may remove for cause an appointee to the Board of Review prior to the conclusion of his term:

The Honorable Robert C. Byrd	2 year term
The Honorable Nancy L. Kassebaum	4 year term
The Honorable Ted Stevens	6 year term
The Honorable Ernest F. Hollings	6 year term

/s/ Gregory Wolfe
GREGORY WOLFE
Secretary

(Adopted at MWAA Board of Directors Meeting, September 2, 1987)

U.S. District Court for the District of Columbia
Plaintiffs' Exhibit 19

METROPOLITAN WASHINGTON
AIRPORTS AUTHORITY
BOARD OF REVIEW

Washington National Airport
Washington, D.C. 20001

MINUTES OF FEBRUARY 24, 1988

The second meeting of the Board of Review of the Metropolitan Washington Airports Authority, convened at the call of its Chairman, was held Wednesday, February 24 at 8:45 a.m. in Room S-146 of the Capitol.

Members Present:

Norman Y. Mineta, Chairman
William Lehman

Authority Representatives Present:

James A. Wilding, General Manager
Edward S. Faggen, Legal Counsel
Francis J. Conlon, Chief Engineer
Nancy Bruce, Governmental Affairs

Gregory Wolfe, Secretary and Counsellor to the Board of Directors

Franklin D. Raines, Lazard Freres & Co., Financial Advisor to the Authority

Action Pending Review

Review of the Board of Directors authorization for the issuance of bonds for the "Early Development Program" projects at both Washington National and

Washington Dulles International Airports. Action taken by the Board of Directors at its regular meeting February 3, 1988; transmitted to the Board of Review by the Secretary on February 3, 1988.

The Chairman, Mr. Mineta, called the meeting to order at 9:05 a.m.

I. APPROVAL OF MINUTES

The first order of business was approval of the previously distributed minutes of the last meeting, held August 6, 1987. The minutes were unanimously approved.

II. REPORT ON "EARLY PROGRAM" PROJECTS

Mr. Wilding reported on the authorization for the issuance of bonds, describing the purpose of this early financing and the projects it would fund. He explained that the financing was intended to enable construction to begin this spring on the first part of the development program at both Airports. Part of the proceeds would be used for the approximately \$30 million payment the Authority owes the federal government to cover its pension liability.

The Master Plan for National would be moving through the final stages of approval during the week of March 1, 1988. Consideration by the Planning Committee of the Board of Directors would be required before the Committee could recommend approval to the full Board on March 16 for approval. The Plan would then be submitted to the Board of Review, which would have 30 days to disapprove it. Submission should occur on March 16.

Mr. Lehman asked why money was being spent for rehabilitation in advance of a master plan, and if the work would be consistent with the Master Plan. Mr. Wilding replied that the rehabilitation projects are entirely consistent and are necessary repair and maintenance projects.

Mr. Mineta asked if maintenance was being neglected until financing was approved. He noted that either the maintenance program was inadequate, or maintenance was being deliberately delayed. He cited the defective lighting system in the Dulles main parking lot as an example.

Mr. Wilding responded that he recognized certain deplorable conditions existed, and they were being addressed, but it would take four or five years to work through a backlog of projects that had not been funded while the Airports were federally operated.

Mr. Wilding then turned to the fourteen projects listed in National's "Early Program", showing their location on a large aerial photograph. The first and largest project would be a parking garage, which would provide a net increase of 1,200 spaces.

Mr. Lehman inquired about the distance from the new garage to the Main Terminal, and whether there would be a skybridge. Mr. Wilding replied the distance would be 1200 feet, and the connection would be a tunnel with moving sidewalks.

Mr. Wilding then described the second major project at National: the demolition of Hangar 1 (the hangar closest to the Main Terminal) and construction on its site of a two-level parking structure to be used by waiting taxicabs. This project would result in the elimination of the lines of cabs along the roadway system.

The third major project would be a portion of the new roadway system, heading south along the property line parallel to the George Washington Parkway.

In response to Mr. Mineta, Mr. Wilding reported that work on the Early Program projects would begin soon, and the road project and cab facility would be complete in the summer of 1989. The parking garage would open late 1989.

Mr. Mineta asked about the number of parking spaces at National. There were about 4,700; the plan was to increase the total to about 8,000. Mr. Wilding also mentioned that the construction of the garages would eliminate existing spaces, so additional satellite parking would be provided at the south end of the Airport before construction begins.

Mr. Lehman asked about the parking lots along the Smith Boulevard exit roadway. Mr. Wilding responded that those public parking lots (Lot No. 1 and Short-Term Lot B) would be closed when construction of the new terminal begins. The Congressional lot would remain in its current location during the Early Program construction period.

Mr. Mineta asked generally about changes from earlier plans, and the relationship between the Metro station and the new terminal. Mr. Wilding explained that the plans had not changed much, but further consideration had resulted in locating the new terminal building closer to the Metro.

Mr. Mineta asked how the two levels of the new road system would be used, and Mr. Wilding explained that the top would be for departing passengers and the bottom would be for arriving passengers and taxis.

Mr. Lehman noted that northbound traffic from the Airport presented a serious traffic problem, and asked what would be done about the situation and how soon. Mr. Wilding said he expected a fourth lane to be added to the George Washington Parkway between the Airport and the 14th Street Bridge. The staff had been working with the Park Service, which would have to agree to any such changes.

Mr. Mineta asked if any of the Early Program projects would be undone as the development plan progresses.

Mr. Wilding responded that all the Early Program projects were included in the full development program.

Mr. Lehman asked how often shuttle buses would operate. Mr. Wilding explained that there would be at least enough buses to maintain the frequencies being operated now, one trip every three or four minutes.

Mr. Mineta asked what the Early Program would cost at National. Mr. Wilding estimated \$50 million, noting that it might reach \$60 million.

Mr. Mineta asked how many levels there would be in the new parking garage; the response was 3½ level floors. Mr. Mineta asked if flat floors with ramps were more expensive. Mr. Conlon said that while he did not know the precise difference in costs, the plan is to tie in the structure architecturally with the Metro station and the Main Terminal, and the decision had been made to use 3½ floors. He thought the cost differential was not significant.

On a chart of the Airport, Mr. Wilding showed an Early Program project to pave an area near the runways for parking aircraft that was critical to the construction of the terminal building. Mr. Mineta asked if it would meet 1,000-foot distance requirement from an active runway. Mr. Wilding responded that aircraft had to be parked 750 feet from the runway and assured that all safety criteria would be met.

Mr. Mineta asked if the airlines were already obliged to pay for the improvements under the contract with the Authority. Mr. Wilding explained that the Authority could cancel the current airline agreements at any time, but they would expire next calendar year. Negotiations would begin later this year with the carriers to reach new long-term agreements.

Generally, the carriers had been agreeable and very supportive of the overall development program, and the

"Early Program" had been discussed frequently with the air carrier committee created to monitor the development program at National.

Mr. Mineta asked about the revenues required to cover the bonds, and how the Authority knew that the income would be adequate. Mr. Raines noted that the Authority could finance the entire Early Program without airline agreement. The bonds would be supported by the market, the demand for airline service to and from Washington. Both National and Dulles were heavily origin and destination ("o & d") airports, which meant great strength financially.

Mr. Wilding noted that the activity level at National was stable now at about 16 million passengers, with a 1½ percent increase per year. The Authority expected growth to stop at about 19 million 15 years from now.

Five years ago, there had been 2.5 million passengers at Dulles; it currently had 11 million, and the total was expected to increase to 20 million by 2005.

Mr. Lehman asked if there was an alternative to building flanking garages at Dulles, and suggested underground garages. Mr. Wilding answered that while the option did exist, underground construction would be very expensive, as well as difficult, since it would be necessary to go through shale rock. He advised that the current proposal was to depress the ground level four feet and add one deck.

Mr. Mineta asked why it was necessary to depress one level, and why two decks could not be built. Mr. Wilding answered there was a strong sense that adding even one deck could interfere with the view of the Saarinen Main Terminal.

Mr. Wilding then described the Early Program projects at Dulles, showing their location on an aerial photograph. The construction of a new international arrivals facility

to accommodate 2,400 arriving passengers hourly would cost about \$44 million. The existing facility now normally handled 700 international passengers hourly.

A design contract for extension of the Dulles Terminal, and a contract for the removal of the Main Terminal ceiling, possibly the largest asbestos ceiling in North America, were also included. While it would be some time before the ceiling would be removed, it was being monitored very closely and was not leaking.

In addition, the Early Program included expansion of the domestic baggage claim facilities and upgrading of the automated flight information system. Two runway high-speed turn-back fillets would be expanded, and Taxiway W-2 would be extended. Two roadway improvements would be undertaken, and nine hundred acres would be acquired to build a third north-south parallel runway.

Mr. Lehman asked about depressed parking and what effect it would have on temporary and long-range parking plans and shuttle bus systems. Mr. Wilding responded that there would be 12,000 public parking spaces daily. The Authority believes that a mix of more close-in parking and satellite parking with shuttle system can meet the parking needs. There would ultimately be 20,000 parking spaces. The new parking plans would not conflict with present roadways.

Mr. Mineta asked to what extent had surrounding jurisdictions prevented residential encroachment at Dulles. Mr. Wilding responded that Loudoun and Fairfax Counties had been cooperative, and the new parallel runway was shown on the Loudoun land use plan.

The discussion now turned to the financing program. Mr. Raines explained that it was desirable to move ahead with the development program to take advantage of the construction season. Prospects for the sale of bonds were good; the Authority had received proposals from banks

offering letters of credit and bond insurance companies offering to guarantee the bonds.

Mr. Lehman asked if there was a rating on the bonds. Mr. Raines said that a rating would not be obtained until the feasibility analysis necessary to support the Authority's own credit had been established. In the meantime, the Authority's bonds would be supported by the AAA rating of the bond insurer and letter of credit banks.

Mr. Mineta next asked how the underwriters had been chosen. Mr. Raines explained that underwriting firms had submitted proposals addressing, among other matters, the qualifications and experience of the firm and the individuals who would be working on the Authority issues, the firm's understanding of the Authority's needs, the firm's airport experience, and experience in the Washington region.

Staff had reviewed the responses, and had ranked the firms by the criteria established in the Request for Proposals. The Board of Directors, in turn, had developed a short list of prospective firms. All firms on the short list had been interviewed, making both oral and written presentations to enable the Board to make a selection.

Mr. Mineta asked if the selection criteria were public. Mr. Raines responded that Mr. Mineta would be provided with a matrix for his review.

Mr. Mineta asked if there had been any affirmative action requirements in the criteria. Mr. Raines responded that three minority, seven regional, and four national firms had been selected. There would probably be over 200 firms in the marketing group selling bonds for the Authority.

Mr. Mineta questioned how the final cuts had been made. Mr. Raines replied that the staff had done a quality ranking, and the Finance Committee had reviewed this ranking and had interviewed the firms with the staff and financial advisors.

The Chairman then called for action on the business of the day.

III. ACTION ON MWAA RESOLUTION NO. 88-3 AUTHORIZING THE ISSUANCE OF BONDS FOR "EARLY PROGRAM" PROJECTS

The Secretary explained that the proposed Resolution was framed in the negative because the Board of Review could only disapprove. Mr. Lehman then moved the adoption of the following Resolution:

RESOLVED, That Resolution 88-3 of the Board of Directors, authorizing the issuance of bonds in an amount not to exceed \$281 million to fund initial construction at Washington National and Washington Dulles International Airports, is hereby disapproved.

The Resolution was unanimously disapproved.

IV. OTHER BUSINESS AND ADJOURNMENT

Steven Palmer, representing Senator Hollings, inquired about a Bill, S. 2004, introduced by Senator Sarbanes and supported by the Federal Firefighters Union. Mr. Faggen explained the Authority's differences with the firefighters and opposition to the legislation.

Mr. Mineta commented that he was pleased the improvements had begun, and suggested a meeting late in March. The Master Plan should be forwarded to the Board of Review on March 16 and the Board of Review would have 30 days to act, until April 15. The Authority agreed to schedule individual briefings on the Master Plan for the Members of the Board of Review.

The meeting formally adjourned at 10:35 a.m.

Respectfully submitted:

/s/ Gregory Wolfe
GREGORY WOLFE
Secretary
Approved
4/13/88
lm

**U.S. District Court for the District of Columbia
Defendants' Exhibit 7**

RESOLUTION NO. 88-8

**METROPOLITAN WASHINGTON
AIRPORTS AUTHORITY**

RESOLUTION

WHEREAS, The Metropolitan Washington Airports Authority is charged in the interstate compact legislation creating it and in its lease with the federal government promptly to commence improvement of both of the Metropolitan Washington Airports, Washington National and Washington Dulles International;

WHEREAS, There has never been an approved Master Plan for Washington National Airport;

WHEREAS, The current Master Planning process began in 1982, before the Authority assumed control of the Airports;

WHEREAS, The proposed Master Plan has been developed in consultation with local governments, federal agencies, user groups, and a regional advisory committee, and has been adequately reviewed by them;

WHEREAS, The proposed Master Plan has been presented to citizens groups, government bodies, and the general public by the Authority staff and its consultants;

WHEREAS, The Board of Directors is satisfied that the proposed Master Plan includes facilities necessary and appropriate to serve the projected numbers of passengers at National Airport, and that it will not bring about an increase in air traffic there;

WHEREAS, The Board of Directors is satisfied that the proposed Master Plan will not affect the noise ex-

posure on National's neighbors, and that noise abatement planning will continue in the Authority's ongoing noise ("Part 150") study;

WHEREAS, The Board of Directors is satisfied that the Federal Aviation Administration and the air carriers are responsible for determining and will adequately address all questions of the safety of operation of any type of air carrier aircraft before operating it at National Airport; now, therefore, be it

RESOLVED, That the proposed Master Plan for Washington National Airport, consisting of an Airport Land Use Plan, Airport Layout Plan, and a Terminal Area Site plan, each dated March 4, 1988 and prepared by Howard Needles Tammen & Bergendoff, is hereby approved and adopted, effective thirty days after submission to the Board of Review.

/s/ Gregory Wolfe
GREGORY WOLFE
Secretary

(Adopted at MWAA Board of Directors Meeting, March 16, 1988)

U.S. District Court for the District of Columbia
Plaintiffs' Exhibit 18

METROPOLITAN WASHINGTON
AIRPORTS AUTHORITY
BOARD OF REVIEW

Washington National Airport
Washington, D.C. 20001

MINUTES OF APRIL 13, 1988

The third meeting of the Board of Review of the Metropolitan Washington Airports Authority was held Wednesday, April 13, 1988, in Room H-301 of the Capitol and was called to order by the Chairman at 8:10 a.m.

Members Present:

Norman Y. Mineta, Chairman
Silvio O. Conte
John Paul Hammerschmidt
William Lehman
Dan Rostenkowski

Authority Representatives Present:

James A. Wilding, General Manager
Edward S. Faggen, Legal Counsel
Francis J. Conlon, Chief Engineer
Nancy Bruce, Governmental Affairs
Gregory Wolfe, Secretary and Counsellor to the
Board of Directors

I. APPROVAL OF MINUTES

The first order of business was approval of the minutes of the last meeting, held February 24, 1988. The minutes were unanimously approved.

II. ACTION ON RESOLUTION NO. 88-8 ADOPTING
THE MASTER PLAN FOR WASHINGTON NA-
TIONAL AIRPORT

Action Pending Review

Review of the adoption of the Master Plan for Washington National Airport. At its regular meeting March 16, 1988, the Board of Directors adopted the Plan by Resolution No. 88-8. The Secretary transmitted the Resolution to the Board of Review the same day.

Mr. Wilding made a presentation on the Washington National Master Plan using graphics and recent aerial photographs. He noted that National comprised 860 acres, of which 680 are above water. There were approximately 45,000 passengers daily, and 1,000 flight operations, half of which are by air carriers.

Mr. Wilding then referred to a display showing the key elements of the Master Plan for National, as adopted by the Board of Directors. He explained that the airfield would not be changed, except for a new taxiway system. General aviation activities would be moved from the north to the south end of the Airport. Commuter air carrier traffic would be shifted to the Main Terminal. The existing General Aviation, Commuter, and North Terminals, and two or three hangars would be demolished to create a major new terminal building.

At the completion of the Plan, the existing number of air carrier gates (44) would be preserved; 32 would be in the new Main Terminal and 12 would remain in the existing Main Terminal. Parking would be provided for 8,000 cars, increased from 4,700, in three garages.

The parking structures would be adjacent to the Metro system, and both parking and Metro would be connected to the new Main Terminal by two enclosed bridges. A completely new roadway system would be constructed,

with separate levels for arrivals and departures at the Main Terminal. Hangar 1 would be demolished, and a new parking structure constructed on that site to park waiting cabs, which now are stored on the roadways and in parking lots.

Mr. Wilding reported there would be over \$400 million spent for work over the next four to five years. Construction on some smaller projects would begin over the next two months.

Mr. Hammerschmidt asked if the bonds currently being marketed would cover only the portion of the Master Plan Mr. Wilding had described. Mr. Wilding responded that the bonds would cover the cost of projects in the "Early Development Program", including the first parking structure, demolition of Hangar 1, creation of the taxi storage area, certain apron work, and the roadway, and not the entire Master Plan.

Mr. Rostenkowski asked if the highway would have two decks. Mr. Wilding responded that there would be two levels immediately adjacent to the new terminal.

Mr. Lehman questioned if a rating on the bonds had been obtained. Mr. Wilding responded that the bonds had been triple-A, based on the credit of a bond insurer. A rating for the Authority's own credit would be obtained for more traditional financings in the future.

Mr. Mineta acknowledged the presence of members of the Citizens for the Abatement of Aircraft Noise (CAAN), stating he appreciated the correspondence he had received, and assured CAAN the Board of Review was aware of their concerns.

Mr. Mineta asked about the impact of the Master Plan on aircraft noise at National. Mr. Wilding responded that the Master Plan would not affect the noise at National, as noise is driven by activity levels, which would not be changed by the Plan.

Mr. Mineta cited the present level of activity—approximately 550 air carrier operations, 200 commuter operations, and 250 general aviation operations per day—and asked what changes were contemplated for the future. Mr. Wilding indicated the forecasts were for 350,000 annual air carrier operations, increasing to 375,000 in the more distant future, or about 1,060 daily.

Mr. Mineta asked if the Master Plan envisioned 24-hour operation of the Airport. Mr. Wilding responded that there was no relationship between the Master Plan and 24-hour operation. He explained the existing nighttime noise rule, which permits only the quietest aircraft to operate. Only two air carrier aircraft currently meet the standard. He also pointed out that the Authority had a Part 150 noise study under way, and that nighttime noise was a part of it. Any change in the nighttime noise rules would require rulemaking.

Mr. Mineta asked if flights still had to conform to the noise standards between 10:00 p.m. and 7:00 a.m. Mr. Wilding confirmed that the rule remained in effect, but noted that any flight scheduled to arrive before 10:00 p.m. could land until 10:30 p.m.

Mr. Mineta pointed out that any change in the noise regulations would have to be reviewed and approved by both the Board of Directors and the Board of Review.

Mr. Mineta asked what the Authority was doing at the Airport to be a better neighbor, and to reduce current noise levels. Mr. Wilding responded that the Federal Aviation Administration operations rules provided for noise abatement flight patterns along the Potomac River and noise abatement operating procedures. Mr. Wilding again made reference to the Part 150 Noise Study. He mentioned that another solution was increasing use of newer, quieter aircraft, but noted this is happening very slowly on its own.

Mr. Mineta asked whether flight paths would be spread out. Mr. Wilding responded that such a "scatter" plan would not be adopted. The Federal Aviation Administration had tried this approach unsuccessfully.

Mr. Mineta asked how residents affected by the noise could get involved in developing solutions. Mr. Wilding said they could participate through the Part 150 Noise Study and a number of other mechanisms. The Northern Virginia Planning District Commission and the Committee on Noise Abatement at National and Dulles Airports (CONANDA) were working with the Authority on noise issues at both Washington National and Washington Dulles Airports.

Mr. Mineta inquired who was actually listening to the residents, noting that they complained that no one was. Mr. Wilding responded that there is a distinction between listening and agreeing. He believed the Authority had always listened, but had not necessarily agreed. He also mentioned that he had held discussions with several people who were in the audience.

Mr. Mineta asked who should be contacted at the Authority to report noise complaints. Mr. Wilding indicated that noise complaints could be reported to Sue Silverman, Community Relations Officer, or to the operations office.

Mr. Mineta asked the status of the Part 150 Noise Study. Mr. Wilding said it should be completed by August.

Mr. Mineta asked how citizens could be informed about noise briefings or noise abatement measures. Mr. Wilding responded that information was available from the technical staff, the community relations staff, or himself.

Mr. Mineta asked if there were any bias favoring liberalization of the nighttime noise rule. Mr. Wilding responded if there were any tilt, it would be against loosening the rule. He said he believed that nighttime noise levels would be tightened up.

Mr. Mineta asked about traffic peaks. Mr. Wilding replied that the High Density Rule, limiting the number of scheduled air carrier flights to 37 per hour, prevented "peaking".

Mr. Mineta asked about the increase in the number of passengers at National. Mr. Wilding reported there are now 15.7 million passengers, and the forecasts showed growth to 19.5 million passengers over the next 17 years. Most of the growth would come through increased load factors (now at 55 percent), more origin and destination traffic, and the introduction of two-engine "widebody" aircraft.

Mr. Lehman commented that the problem did not appear to be the twelve flights after 10 p.m., but repeated operations in other hours. If the people would have to live with the noise, they should be told so.

Mr. Wilding again mentioned the increased numbers of quieter aircraft. Mr. Lehman commented that they would be introduced over 10 to 15 years, a relatively long period. He also repeated that the people should not be misled about improvements in noise levels. Mr. Wilding responded that no one had ever told the community the noise problem would disappear. Mr. Lehman noted the message appeared to be that noise would not get worse. Mr. Wilding agreed that the noise would not get worse, but would improve "glacially".

Mr. Mineta asked about the noise generated by general aviation jets. Mr. Wilding responded that there would be some growth in general aviation operations, but without a significant noise impact.

Mr. Rostenkowski asked why the slot limitations at National did not prevent general aviation aircraft from landing or taking off at any time. Mr. Wilding noted that the High Density Rule, applied to Instrument Flight Rule conditions only, which meant there could be additional general aviation operations in Visual Flight Rule

conditions. Mr. Mineta asked if general aviation aircraft were subject to the noise regulations. Mr. Wilding responded that they were.

Mr. Mineta then explained the negative procedures peculiar to the Board of Review. Mr. Rostenkowski thereupon moved to disapprove the Washington National Airport Master Plan. The motion to disapprove was unanimously rejected.

The Chairman then asked Mr. Wilding to address the Dulles Airport Access Road proposal.

III. BRIEFING ON THE AUTHORITY'S PROPOSAL TO CHANGE ITS CURRENT REGULATION TO PERMIT HIGH OCCUPANCY VEHICLE USE OF THE DULLES ACCESS HIGHWAY ON A TEMPORARY BASIS.

Mr. Wilding explained that Washington Dulles International Airport includes the Dulles Access Highway, which had been built in 1960. In 1959, a policy to reserve the Access Highway for Dulles Airport traffic only had been announced.

During the 1970s, exceptions had been granted for Wolf Trap Farm Park traffic and commuter buses. In the early 1980s, carpools and commuter traffic were allowed to use the Access Highway on a temporary basis, until the Dulles Toll Road was completed.

In 1984, the exceptions terminated when the Dulles Toll Road opened adjacent to the Access Highway. After a year or two, traffic on the Toll Road had begun to build up to the point that it became seriously congested. Congressman Frank Wolf had urged the construction of slip ramps from the Toll Road to the Access Highway for use by commuter buses. Secretary of Transportation Elizabeth Dole had approved the proposal, and they had been in operation for two years.

Mr. Wolf and Fairfax County now proposed to broaden the current exemption to allow vanpools and carpools to use the eastbound ramp as well. It appeared the Authority could help eastbound traffic on the Toll Road in the morning if the half of the Access Highway east of Reston could be used for two hours a day by vanpools and carpools.

The Access Highway could accommodate up to 4,000 cars per hour. On the section now being considered for non-airport use, there are 1,275 cars per hour. An additional 200 to 500 vehicles per hour, the projected demand, would only bring the total up 1,775 per hour at worst. The proposal under consideration would be for a limited period only, expiring when a third lane was added to the Toll Road.

Mr. Mineta asked when an additional lane would be constructed on the Toll Road. Mr. Wilding said the Virginia Department of Transportation expected to finish it in 1991.

Mr. Mineta then asked about traffic service levels on the Access Highway, noting that level F was expected for the Toll Road. Mr. Wilding responded they would stay between the B and C ranges.

Mr. Mineta then asked what the service level would be on the Toll Road in the morning peak hours after the third lane was complete. Mr. Wilding responded low C to high D range.

Mr. Mineta expressed concern that if the change was made, it would be difficult to convert back to exclusive airport use. Mr. Wilding agreed that there was a risk involved.

Mr. Mineta asked about the procedures for monitoring the vanpools and carpools. Mr. Wilding responded there would have to be positive police controls on the ramps.

Mr. Mineta commented that presently the only way for commuters to get into the Access Highway was by backtracking. Even though it was illegal and the rules were enforced by police, the congestion on the Toll Road leads motorists to attempt to cheat. Mr. Wilding said that the Authority Police enforced against backtracking, and that cheating was being reduced.

Mr. Mineta expressed reservations about the proposal, even though he was sympathetic to people who sit on the Toll Road. He emphasized, however, that the Access Highway had been built exclusively for airport users. Mr. Hammerschmidt expressed his concern that granting carpool access would develop a strong constituency, and that it would be difficult to roll it back.

Mr. Mineta said he also believed that changes in the operation of the Access Highway would present Fairfax and Loudoun Counties with added incentives to develop more office buildings in the Access Highway corridor, further increasing roadway congestion.

Mr. Lehman also expressed reservations, noting that the Access Highway had been a direct federal project, built with General Funds from the U.S. Treasury, and without the customary state or local contribution.

Mr. Conte asked if there had been any discussion to provide access to Dulles by rail, recalling past federal efforts in that regard. Mr. Wilding responded it had been discussed, and mentioned the current DART proposal to connect Dulles with the Metro system using the reserved right-of-way in the median strip of the Access Highway.

IV. OTHER BUSINESS AND ADJOURNMENT

There being no further business, the meeting was adjourned at 9:02 a.m.

Respectfully submitted:

/s/ Gregory Wolfe
GREGORY WOLFE
Secretary

Approved August 9, 1988
GW

U.S. District Court for the District of Columbia
Plaintiffs' Exhibit 12

RESOLUTION NO. 88-34
METROPOLITAN WASHINGTON
AIRPORTS AUTHORITY

RESOLUTION

RESOLVED, That Section 159.35 of the Metropolitan Washington Airports Authority Regulations is revised, effective September 12, 1988, to read as follows:

§ 159.35 Use of Washington Dulles International
Airport Access Highway

(a) Except as provided in paragraph (b) of this section, a person may use the Washington Dulles International Airport Access Highway only for the purpose of going to, or leaving Washington Dulles International Airport for airport-related business, or, with the permission of the Airport Manager, or his designee, to perform work on the Highway. Use by any person of the Washington Dulles International Airport Access Highway for a purpose not authorized by this section is prohibited.

(b) *Exceptions.* No person may use the Highway for other than airport related business except:

(1) In (i) buses that are being operated in common carriage of persons by companies holding a certificate of public convenience and necessity for its operation and for which use of the Highway is appropriate, or (ii) in school buses as the term is defined in § 46.1-1(37) of the Code of Virginia.

(2) Until September 11, 1989, in a high occupancy vehicle ("HOV") occupied by three or more persons, provided:

(i) The vehicle entered the Highway at a point designated by an official sign as an HOV entry point;

(ii) The vehicle is traveling eastbound from the designated entry point in the eastbound lanes of the Highway; and

(iii) The vehicle is being operated during the hours of the day that HOV use of the Highway is authorized as provided on an official sign at the HOV entry point.

(c) No person may:

(1) Enter the Highway through other than a road or ramp approved by the Airport Manager or on his authority for that purpose;

(2) Exit the Highway through other than a road or ramp approved by the Airport Manager or on his authority for that purpose;

(3) Make a U-turn on the Highway;

(4) Enter upon or cross through the median strip of the Highway;

(5) Operate the vehicle in violation of operating signs posted on the Highway by the Airport Manager or on his authority. The fact that such signs are posted shall be prima facie proof that such signs were posted by the Airport Manager or on his authority.

(d) All violations of § 159.35 are classified as Class 4 misdemeanors, punishable by a maximum fine of one hundred dollars (\$100).

(e) All laws of the Commonwealth of Virginia and any ordinance or regulation of any political subdivision in which the Highway is located also apply.

/s/ Gregory Wolfe
GREGORY WOLFE
Secretary

(Adopted at Board of Directors Meeting, July 6, 1988)

U.S. District Court for the District of Columbia
Plaintiffs' Exhibit 11

RESOLUTION NO. BOR 88-1

BOARD OF REVIEW
METROPOLITAN WASHINGTON
AIRPORTS AUTHORITY

RESOLUTION

WHEREAS, The Metropolitan Washington Airports Authority Board of Directors approved a change in the regulation of the Washington Dulles International Airport Access Highway (Access Highway) to permit high occupancy vehicle use thereof, in the east bound direction, during the morning rush hour only, on a temporary basis;

WHEREAS, The Access Highway was constructed by the Federal Aviation Administration with appropriated federal funds from general revenues;

WHEREAS, The Access Highway was intended for the exclusive use of air passengers and others with business at Washington Dulles International Airport;

WHEREAS, The Federal Aviation Administration provided right-of-way for the adjacent Dulles Toll Road without cost to the Commonwealth of Virginia;

WHEREAS, The Commonwealth of Virginia and its Counties of Fairfax and Loudoun have not provided adequate highway capacity for vehicle traffic in the rapidly developing Dulles corridor;

WHEREAS, The Dulles Toll Road, even with additional lanes, will operate at congested traffic service levels;

WHEREAS, The Dulles Toll Road will never have sufficient rush hour capacity to provide a free-flowing alternative to the Access Highway;

WHEREAS, Without adequate capacity for carpool traffic on the Dulles Toll Road, the Authority will find it difficult, if not impossible, to remove carpools from the Access Highway once such operations are allowed;

WHEREAS, the Authority's Engineering Division projects congested traffic service levels on the Access Highway as early as 1995 if carpools are permitted to use the Access Highway;

WHEREAS, there are serious questions about the ability and willingness of the Fairfax County Police to enforce a rule permitting only carpools to use the access ramp to the Access Highway;

WHEREAS, that the use of the Access Highway by carpools, unrelated to airport use, is inconsistent with the purpose for which it was built, and is contrary to the interests of the users of the Airport; now, therefore, be it

RESOLVED, That Resolution No. 88-34, adopted by the Metropolitan Washington Airports Authority Board of Directors July 6, 1988, and amending section 159.35 of the Authority Regulations to permit non-airport related, high occupancy vehicle use of the Washington Dulles International Airport Access Highway, is hereby disapproved.

Roll Call Vote
Members in Favor:
 Mr. Hammerschmidt
 Mr. Hollings
 Mr. Lehman
 Mr. Mineta
 Mr. Rostenkowski
Members Opposed: None
Abstentions: None

/s/ Gregory Wolfe
 GREGORY WOLFE
 Secretary

(Adopted at the Board of Review Meeting of August 9, 1988)

**U.S. District Court for the District of Columbia
 Plaintiffs' Exhibit 13**

**UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF COLUMBIA**

Civil Action No. 88-3319 JHG
 (Judge Joyce Hens Green)

CITIZENS FOR THE ABATEMENT OF AIRCRAFT NOISE, INC.,

JOHN W. HECHINGER, SR.,

and

CRAIG H. BAAB,

Plaintiffs,

v.

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY,

and

BOARD OF REVIEW,

Defendants.

AFFIDAVIT OF SHERWIN LANDFIELD

I, Sherwin Landfield, hereby declare and state as follows:

1. I am on the Board of Directors of Citizens for the Abatement of Aircraft Noise, Inc. ("CAAN"), one of the plaintiffs in this action.

2. CAAN is a nonprofit membership organization composed of citizens' groups and individuals from the Dis-

trict of Columbia, Maryland, and Virginia who wish to minimize adverse noise, safety, and environmental effects of air traffic at Washington National Airport. CAAN's bylaws, which are attached, describe CAAN's purpose and structure. Attachment 1.

3. CAAN's primary purpose is to encourage the development and implementation of a rational air transportation policy for the Metropolitan Washington D.C. area, which would include balanced service at the area's three airports, reducing aircraft operations at Washington National Airport, and consequently alleviating the noise, safety problems, and air pollution that result from such operations.

4. Most of CAAN's members live under the flight path going to and from National Airport. They are adversely affected by the noise, air pollution, vibrations, and safety threat from air traffic at National Airport. They are also adversely affected by the traffic congestion resulting from passenger activity at that airport. Some have developed health problems that they attribute to the air traffic, and others' property values have suffered as a result of their proximity to the airport or its flight path.

5. CAAN's members generally favor a nighttime curfew on air traffic and reduction in the level of daytime air traffic at National Airport, accompanied by an expansion of air services available at Dulles International and Baltimore-Washington International Airports.

6. The Airports Authority's Master Plan for National Airport will injure CAAN's members further because it proposes to expand the airport's facilities, to build them to accommodate wide-bodied jets, to increase passenger levels, and to increase air carrier traffic by utilizing currently unused slots. Washington National Airport Master Plan Presentation to MWAA Board of Directors at 1 (March 1988) (Exhibit 16).

7. The Airports Authority is implementing the Master Plan by issuing bonds to finance it and entering into construction contracts. In March 1988, the Airports Authority issued its first bond series, and it has since issued several additional bonds series to finance airport improvements.

8. If we are successful in this lawsuit, the Airports Authority will not have the power to implement the Master Plan or to otherwise expand National Airport, which will benefit CAAN and its members.

9. Previously, CAAN advocated its position with some success before Congress and the Federal Aviation Administration. However, since the transfer, CAAN's influence is greatly diminished because the congressional Board of Review excludes local representation and because the Representatives and Senators from Maryland and Virginia, and the District of Columbia Delegate no longer have any power over the airports. Before the transfer, some local representatives, such as Representative Frank Wolf from Northern Virginia, served on the committees that had oversight responsibilities over the airports so that they could better serve their constituents. However, now that Congress as a whole exercises no power over the airports, Representative Wolf has taken other committee assignments and made airport noise from National Airport less of a priority.

Pursuant to 28 U.S.C. § 1746 and Local Rule 106(g), I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 13th day of December, 1988.

/s/ Sherwin Landfield
SHERWIN LANDFIELD

U.S. District Court for the District of Columbia
Defendants' Exhibit 8

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

C.A. No. 88-3319 JHG

Hon. Joyce Hens Green

CITIZENS FOR THE ABATEMENT OF
AIRCRAFT NOISE, INC., *et al.*,
Plaintiffs,

v.

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY, *et al.*,
Defendants.

AFFIDAVIT OF JAMES A. WILDING

COMMONWEALTH OF VIRGINIA)
) SS
COUNTY OF ARLINGTON)

I, James A. Wilding, being duly sworn, depose and say:

1. I am currently the General Manager and Chief Executive Officer of the Metropolitan Washington Airports Authority ("Authority"), the operator of Washington National and Washington Dulles International Airports ("Airports"). The Board of Directors of the Authority appointed me to my current position on May 6, 1987. Prior to that, I served as Director of the Metropolitan Washington Airports when they were operated by the Federal Aviation Administration ("FAA"). I also

served as the Deputy Director and the Chief of the Engineering staff. I have been employed at the Airports in various capacities since 1959, and I am very familiar with their operation.

2. I am very familiar with the development of the Master Plan for National Airport and the content of that Plan. I am also familiar with the aircraft noise abatement issues at the Airports and with the on-going study of possible measures to further promote compatibility between National Airport and the surrounding communities. That study is being conducted in accordance with FAA regulation Part 150 and will be completed on or about May 1, 1989. Further, I am familiar with an organization called Citizens for the Abatement of Aircraft Noise ("CAAN"), the plaintiffs herein, and I have, on several occasions corresponded with members and representatives of CAAN, and met with them, to discuss the Master Plan for National Airport and aircraft noise abatement matters.

3. The Master Plan for National and aircraft noise abatement at National are two separate issues. The Master Plan, which the Authority's Board of Directors adopted on March 16, 1988, Resolution No. 88-8, consists of three maps—an Airport Land Use Plan, and Airport Layout Plan, and a Terminal Area Site Plan (Attachment A). The Master Plan for National Airport was developed to rehabilitate the Airport, not to expand it. The Master Plan for National Airport was developed to alleviate several serious problems at the Airport, including congested and confusing roadways associated with the existing physical plant; inadequate public parking; inconvenient access to the terminals from the Metrorail station; congestion and inadequate facilities and passenger amenities within the terminals; and on the airfield, inadequate apron taxiways. The Master Plan addresses these and other related areas. Under the Master Plan, a new terminal will be built, but it pre-

serves the existing number of gates for the air carriers' aircraft (44). The Master Plan also provides for a new dual level roadway system to improve and simplify traffic flow and parking structures to accommodate the public and waiting cabs so as to eliminate roadway congestion. The Master Plan does not change the airfield in terms of the number of runways, runway length, or runway orientation.

4. The lease agreement between the Authority and the U.S. Department of Transportation has placed certain restrictions on the Authority's discretion to alter the number of aircraft operations at National. The Authority cannot increase or decrease the number of aircraft operations authorized under an FAA regulation known as the High Density rule. The FAA High Density rule allocates 37 air carrier schedules or "slots" per hour. Further, the Authority cannot impose a limitation on the number of passengers using National.

5. Based upon my correspondence and personal discussions with CAAN representatives, it is clear to me that CAAN wanted the Authority to adopt a Master Plan for National Airport that would represent a lesser commitment to the rehabilitation of National Airport than the Plan that was adopted. CAAN sought a Master Plan which would make only essential repairs at National. CAAN's objective was to reduce the levels of activity at National and therefore sought to have that objective embraced by the Authority in its Master Plan. They envisioned a Master Plan that would have the effect of reducing aircraft and passenger activity at National by modifying past policy and legislative decisions which we view as cast in place by the lease.

6. The Master Plan that was adopted by the Authority did not adopt CAAN's proposals. The Master Plan adopted does not, consistent with the Authority's lease, reflect an intent to increase or decrease aircraft or pas-

senger activity. It is a Plan to rehabilitate, renovate, and modernize the terminal, roadway, and parking facilities for the activity that will occur there. The Plan does not expand the use of National and further, in my opinion, the Master Plan is noise neutral. It does not alter the number of aircraft operations, the flight paths utilized, or the type of aircraft allowed to operate at National. It does not increase the number of aircraft that will fly into the Airport at night (when the Airport is restricted to aircraft below a specified noise level). A forecast of activity prepared by the Authority in conjunction with the preparation of the Master Plan showed some increase in nighttime aircraft operations occurring, not as a result of the Master Plan but as a result of the production of more aircraft technologically capable of meeting the Authority's nighttime noise level regulation. The decision on what the regulated noise limits should be rests with the Authority, and a decision to operate at night with aircraft that meet the regulation rests with the aircraft operator. These decisions are not made in the Master Plan. The Master Plan does contemplate that the aircraft gates to be built at the new terminal will be able to accommodate some new technology or larger aircraft than use the Airport today. This will occur only if an air carrier wants to use these aircraft at National and the FAA determines that it is safe to do so. These newer aircraft, such as the A-300 and Boeing-767 are, as a general principle, substantially quieter than aircraft such as the Boeing-727, B-737, and the McDonnell-Douglas DC-9 which are the predominant aircraft in use at National Airport today.

7. The Master Plan was submitted to the Authority's Board of Review on March 16, 1988, and the Board of Review voted not to disapprove the Master Plan on April 13, 1988. The Master Plan is in effect.

8. I am familiar with the matters that have been referred to the Authority's Board of Review. In only one

instance has the Board of Review disapproved an action by the Board of Directors of the Authority. The Board of Review disapproved a change to the Authority's regulations that would have permitted non-Airport related traffic to use the Dulles Airport Access Highway. The Board of Review disapproved the proposed change because "the use of the Access Highway by carpools, unrelated to airport use, is inconsistent with the purpose for which it was built, and is contrary to the interests of the users of the Airport." Resolution No. BOR 88-1 (Attachment B).

9. As part of the Part 150 noise compatibility study, the Authority has considered many different noise abatement measures (Attachment C). Several of these measures are being considered in detail. Meetings with the general public have been conducted as part of this process, and CAAN, through the public review process, has had an opportunity to comment upon the measures and to influence the Authority with regard to this study. CAAN will have additional opportunity in the future to comment on specific noise abatement measures.

/s/ James A. Wilding
JAMES A. WILDING

Subscribed and sworn to before me this 30th day of January, 1989.

/s/ Cynthia B. Howard
Notary Public

My Commission Expires: